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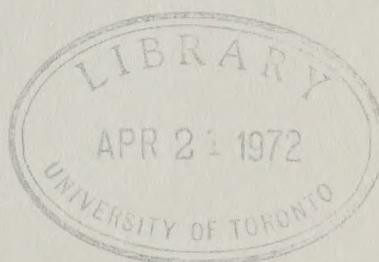


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**ROYAL COMMISSION ON EMPLOYMENT OF FIREMEN  
ON DIESEL LOCOMOTIVES IN FREIGHT AND YARD  
SERVICE ON THE CANADIAN PACIFIC RAILWAY**

(27) 64-68

## PROCEEDINGS



DATE: October 30, 1957

PLACE: Ottawa, Ont.

PAGES: 9046 - 9176

VOLUME: 64

E. L. FEATHERSTON  
SHORTHAND REPORTER  
241 MANOR AVENUE  
ROCKCLIFFE PARK  
OTTAWA, CANADA

Mr. Fraser













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I N D E X

October 30, 1957

A R G U M E N T

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ROYAL COMMISSION ON EMPLOYMENT OF  
FIREMEN ON DIESEL LOCOMOTIVES IN  
FREIGHT AND YARD SERVICE ON THE  
CANADIAN PACIFIC RAILWAY

Proceedings of public  
hearing held at Ottawa,  
Ontario, Wednesday,  
October 30, 1957.

PRESENT:

Hon. R. L. Kellock,	Chairman
Hon. C. C. McLaurin,	Member
Hon. Jean Martineau,	Member
Douglas M. Fraser,	Secretary
A. R. Winship,	Asst. Secretary

APPEARANCES:

C. J. A. Hughes, Q.C.,	Representing the Commission
I. D. Sinclair,	Representing the Canadian Pacific Railway Company
David Lewis,	Representing the Brotherhood of Locomotive Firemen and Enginemen

Wednesday,  
October 30, 1957.

64th DAY

MORNING SESSION

---The Commission resumed at 10.30 a.m.





MR. SINCLAIR: Mr. Chairman and gentlemen, I should like to discuss the question of highway crossings at grade, which in non-technical language are known as level crossings.

THE CHAIRMAN: That is your subject matter?

MR. SINCLAIR: Yes. In a number of the incidents described by Brotherhood witnesses warnings were given as trains approached road crossings. The value of such a warning must be considered in the light of the evidence given with respect to the ability of an engineman to take any effective action in such circumstances.

Exhibit 112 was filed to show the relative stopping distances for motor vehicles and trains. That exhibit was filed by Mr. Fraine. Based on this information, Mr. Fraine expressed the view that by the time the head-end crew of a train concludes that a car approaching a crossing is not going to stop it is too late for the engineman to take any effective action to slow down or stop the train. The amount by which a train can be slowed down will not generally be sufficient to reduce the damage done by the impact, having in mind the relative weights of the engine and the train and cars and the automobile.





Mr. Fraine's opinion was that the most that a member of the head-end crew of a train can do is to make sure that the bell is rung and the whistle is blown, but if this does not cause a car approaching the crossing to stop, the application of the brakes is not likely to be of much help.

Fraine, Volume 18, pages 2341-2345.

Volume 19, pages 2473-2475.

Brotherhood witness Lancaster from the Santa Fe suggested that applying the brakes might have value in avoiding or reducing the effect of accidents, but on cross-examination he admitted that when trains are going at high speeds the engineman is pretty well helpless because at a time when effective action might be taken the crew on the engine cannot know what sort of decision the driver of a car is likely to make. He agreed with me that the engineman would not be expected to apply his brakes on all occasions when there was any doubt about what the driver of a car was likely to do as he was approaching a level crossing.

Lancaster, Volume 48, page 6905.

Volume 49, pages 6973-6979.

Mr. May, Local Chairman of the

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Brotherhood of Locomotive Engineers at Revelstoke, gave evidence at Vancouver. He agreed with a statement of his Grand Chief Guy Brown, which was as follows:

"It is difficult or impossible for the locomotive engineer to know whether the driver of a vehicle approaching a highway crossing is going to stop on reaching the crossing or will remain stopped upon arrival at the crossing."

Further Mr. Brown went on to say, and Mr. May agreed that the conduct of such drivers "is totally unpredictable."

May, Volume 59, pages 8271-8272.

That is all I wish to say on that topic. I turn now to the question of experience operating diesels in road freight service without firemen. I mentioned this in my preliminary remarks, but I intend to deal with it a little more in detail.

Canadian Pacific and other railways have had considerable experience in operating electric and diesel locomotives in road freight service without a fireman. Their successful experience in these operations adds support to the view that a fireman is not required to act as a lookout on diesels in road



freight service.

Canadian Pacific's electric operations between Port Dover, Galt and Waterloo, Ontario, a distance of some 69 miles, are freight operations and are carried on by a five-man crew consisting of a motorman or engineman, a trolleyman, a conductor and two trainmen, in some cases, and in other cases by a four-man crew where one of the trainmen also does the work of the trolleyman. The evidence was that where there was a trolleyman in the case of a five-man crew on a train that trolleyman when he is there does not take the place of a fireman as lookout because he rides at the rear of the locomotive, facing the rear. Only the head trainman and the motorman ride in the cab.

Emerson, Volume 32, pages 4417-4423.

Canadian Pacific also operates three 44-ton diesels on its subsidiary, the Aroostook Valley Railway in Maine, a distance of some 32 miles. This is a freight operation with local switching. The crew on these diesels consist of an engineman and trainman on the head end, and a conductor and trainman on the rear end. The evidence is that this operation has been carried on successfully





without firemen.

THE CHAIRMAN: How long has that been operating?

MR. SINCLAIR: Since the transfer from electric power, from catenary power, to diesel power. It has been going on for ten years or so, from right after the war.

Emerson, Volume 32, pages 4424-4425.

Then there is the Quebec North Shore and Labrador Railway, which runs from Seven Islands to Knob Lake, Quebec, a distance of some 350 miles. This railway is operated as a heavy traffic railroad. There are very heavy trains, much heavier than the freight trains on the Canadian Pacific. The crew consists of an engine-man and trainman on the head end and a conductor and trainman on the rear end. There are only two men on the head end of those trains.

Mr. Bybee, the superintendent of that railway, gave evidence that its operating safety record is good and that he did not think it would be improved by having another man in the cab of the leading unit. He stated also that he had received no complaints from the engine-man or the trainman about operating without a fireman.





Bybee, Volume 27, pages 3685-3687.

Pages 3712-3714.

Pages 3720-3722.

Evidence was also given by Mr. Kiley of a number of inter-city electric railways in the United States which operate without a fireman. Some of these electric railways carry only passengers, but most also have freight operations and some carry on primarily or exclusively freight operations. Most of them run through very congested urban areas. They operate without firemen.

Exhibit 151.

Kiley, Volume 28, pages 3952-3963.

As the Commission knows, diesel and electric locomotives are operated in road service by some European railways without firemen. The evidence before the Commission is that there is no instance on European railways where there are three men employed on the head end in road freight service.

Koster, Volume 6, page 700.

Emerson, Volume 32, page 4404.

Exhibit 180.

Moreover a comparison of the accident statistics of Canadian Pacific and the European railways shows that the



safety record of European railways is comparable to that of Canadian Pacific, and in some respects better.

Exhibit 181.

Emerson, Volume 32, pages 4413-4417.

The Commission when it was in Europe had the opportunity of riding some 1,800 miles on European railways, on trains, on engines, in vans, and of course some in passenger coaches. The Commission observed electric and diesel multiple unit operations with one man in the control cab in France, Switzerland and Holland. They observed electric locomotives operated with two men in France; with one man in Switzerland; with one man in Holland, at the head end. In France the Commission observed diesel locomotives--

THE CHAIRMAN: Mr. Sinclair, I am sorry to interrupt you, but my attention was caught first by that reference to 1,800 miles. Was that the total distance the Commission and counsel and the parties rode, or is that the aggregate of the number of miles in which someone or some member of the Commission was in a cab?

MR. SINCLAIR: That is where the Commission was making viewings; that is





where they actually rode. As you will recall, sometimes there was one member of the Commission and one counsel up on the engine, the rest being back in the train. They were shifting back and forth from time to time. For instance, you will recall the movement on the St. Godard line.

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THE CHAIRMAN: My point is the 1,800 miles was the total number of miles covered on the various days that we went out from Paris, Berne, Amsterdam and London.

MR. SINCLAIR: That is right.

THE CHAIRMAN: But it does not mean that some member of the commission was in the cab of one of these locomotives for the whole 1,800 miles.

MR. SINCLAIR: No, it does not.

THE CHAIRMAN: All right. That is what I want to be accurate about. Now, you are speaking in detail, are you, about the practice of the number of the crew in the cab in the various countries.

MR. SINCLAIR: Yes.

THE CHAIRMAN: Would you just do that again?

MR. SINCLAIR: I was saying that you observed in France, Switzerland and Holland electric and diesel multiple unit operations with one man in the cab.

THE CHAIRMAN: I did not hear that.

MR. SINCLAIR: The commission observed in France, Switzerland and Holland electric and diesel multiple unit passenger operations with one man in the cab.

THE CHAIRMAN: I have some recollection that it made a difference what hour of the day or night but that did not apply to the particular



operation you are now speaking about?

MR. SINCLAIR: The only place where that applies is in Switzerland and that is shown on Exhibit 180 under notes 7 and 8. In electric operations during certain times of the night a second man is on the locomotive in multiple unit operations. The only time there is an extra man is when there are no passengers carried at all, that is, where they would be deadheading multiple unit equipment. In all other cases, day or night, there is one man.

THE CHAIRMAN: Then note 8 is the exception to what you are now talking about, electric and diesel multiple unit passenger operations.

MR. SINCLAIR: Yes. The only exception is when there are no passengers on the train at all. Then a second man is put in the cab in multiple unit operation. On electric locomotives the Commission observed them in France with two men, one man in Switzerland and one man in Holland.

THE CHAIRMAN: France what -- two?

MR. SINCLAIR: Two and Switzerland one and Holland one. In Switzerland, of course, the exception as shown on Exhibit 180 for certain night hours would apply.

THE CHAIRMAN: Notes 7 and 8.

MR. SINCLAIR: That is right.

MR. LEWIS: Note 7.





THE CHAIRMAN: Pardon?

MR. LEWIS: Note 7 as far as this is concerned. Note 8 deals only with multiple units.

MR. SINCLAIR: Seven and nine.

THE CHAIRMAN: Seven and nine. All right.

MR. SINCLAIR: In France the Commission observed diesel locomotive operation with an engineman but because there was no dead man control another man was in the cab whose sole and only duty was to be available in case the engineman was incapacitated. In Switzerland it observed diesel freight operation with one man in the cab and similarly in Holland.

The Commission heard from Mr. Emerson about the resolution of the International Association of Railways, and the resolution was in these words:

"The handling of a diesel locomotive may be entrusted to a single person."

Volume 32, pages 4410-4411.

Mr. Imhoff, called by the Firemen's Union and the General Secretary of the International Transport Workers Federation, gave evidence of a resolution of the congress of his association, and I should like to quote it.

MR. LEWIS: The railway section.

MR. SINCLAIR: The railway section, yes. He gave evidence of a resolution of the railway section of his association and I am

Figure 1. Schematic representation of the experimental design. The subjects were divided into two groups: the control group and the experimental group. The control group was divided into two subgroups: the control group and the experimental group. The experimental group was divided into two subgroups: the control group and the experimental group. The control group was divided into two subgroups: the control group and the experimental group. The experimental group was divided into two subgroups: the control group and the experimental group.

going to quote part of it. .

"In order to safeguard the future of locomotive men, to prevent exploitation and the imposition of intolerable conditions upon them we affirm that as a general rule two men should be employed in the cabs of these new, costly and powerful machines."

That was the resolution. There is more to it but that is the meat of it.

Volume 52, page 7477.

The type of machines, of course, to which reference was made were diesel and electric locomotives. In fact, as the Commission knows, and as is shown from Exhibit 180A, which was developed during the European observations and was agreed to between counsel, in Europe the railways are moving from two men to one man on locomotives in road service. The first indication of this beyond what had already been established in Switzerland and Holland was in France where diesel units equipped with dead man control will only have one man in the cab in road service. That is shown in Exhibit 180A.

THE CHAIRMAN: What number?

MR. SINCLAIR: 180A. This further information was developed since Mr. Emerson gave evidence and it was developed when the Commission was in Europe. In Britain the matter has not been resolved, and if I may be pardoned a





prediction it is this, that as a result of the negotiations now in progress at least some manning by one man in road operations, both passenger and freight, of electric or diesel power will evolve.

THE CHAIRMAN: Well, we have taken hearsay but I do not know whether we can take a prediction.

MR. SINCLAIR: I quite understand.

THE CHAIRMAN: Unless Mr. Lewis joins with you, of course.

MR. LEWIS: I do not think You should take a prediction.

THE CHAIRMAN: In the United Kingdom you have two men and not three. That is your point.

MR. SINCLAIR: That is right. On all multiple unit electric operations there is one man in Britain today, as shown by Exhibit 180.

When the Commission was riding on the locomotives in Switzerland and Holland where there was no second man on the locomotive, surely they did not feel less safe and surely the operations were not less efficient than when they were riding on the Canadian Pacific where there were three men in the cab. When they had in France a second man on the locomotive because it had no dead man control, could it be said that that second man was required when adequate dead man control devices were available? Indeed, in



France when they were applied that man, who was there only for the purpose of being available in case the man was incapacitated, was taken off, as I have said, and as shown by Exhibit 180A.

Now, in road operations in Europe, whether freight or passenger, it is my submission that the party as a whole when it was on these trains must have been impressed by the safety and efficiency of those operations that they saw and in which they took part. Yet, as Mr. Emerson pointed out, European railways do not have as good warning devices as are on the trains in Canada. For instance, the bells, whistles and particularly the headlights are not equal to those that are found on North American power. Again, it must have been apparent to everyone in the party in Europe that the signal systems were not as easily seen, not as easily identified, as our searchlight type of signals which are generally used on the Canadian Pacific and which the Commission observed when riding on the engines on a number of occasions on the Canadian Pacific.

The Commission in the move from Dijon to Berne saw in both France and Switzerland areas of heavy grades, sharp curvatures, places where there were slide fences and snow fences. In Switzerland on the St. Gotthard line, the Commission saw snow sheds and extremely heavy snow fences built with steel and concrete. The Commission also observed in Switzerland large





rotary plows for snow removal and snow cleaning and fighting slides. These were observed in the shops at Erstfeld.

The Commission saw gradients in Switzerland that were more severe, with curves more sharp, than are on the Canadian Pacific whose maximum grade, as is in evidence, is 2.2. These conditions in Switzerland, the heavy grades, the sharp curvatures, the difficult situations, did not result in different crew assignments on those parts of the railways where they occurred. The crew assignments are the same.

I want to expand just a little on the point I made in my general opening with respect to the experience of operating diesels in passenger service. In my respectful submission, the most conclusive answer to the suggestion that firemen are required when travelling over the road in freight service, leaving aside for the moment switching en route, is the fact that passenger trains are operated successfully with only two men in the cab on the Canadian Pacific. On passenger trains with steam locomotives, one of these two men, because of his firing duties, had primary and demanding duties that took up a substantial part of his time. In hand firing days and on hand fired locomotives that are still operating, according to the evidence that occupies a great deal of a fireman's time.

One man on the left side of a



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Mr.Sinclair

locomotive in passenger service has proved to be quite adequate in spite of the higher speed of passenger service. In my respectful submission, this should dispose of the question of requiring a third man as a lookout on diesels in freight service as far as operations over the road are concerned.





As I mentioned earlier, the experience of Canadian Pacific with self-propelled gas electrics and Budd cars where only one man is in the cab operating at high speeds in passenger service clearly indicates that when the engineman has a sufficiently clear view ahead, even a second man in the cab does not add to the safety of the operation.

The Commission will recall that the ratio of passenger train accidents per million train miles for the company's self-propelled operations and gas electrics is identical to that for its steam and diesel locomotives, one, of course, having one man in the cab and the other two.

Emerson, volume 32, pages 4516-4519.

Exhibit 190 shows statistics.

In the result , therefore, it is my submission that the reasons advanced by the Brotherhood for requiring a fireman to act as a lookout on a diesel in road freight service are not valid, that the incidents the Brotherhood witnesses have referred to do not support the view that a fireman is required for that purpose and that the experience of railways in operating without a fireman in Canada, in the United States and in Europe demonstrates that safety



will not be adversely affected if firemen are not employed in road freight service.

On the contrary, the presence of the firemen, may, in my submission, have an adverse affect on the safety of such operation. With two men on the left side, both having a duty to keep a lookout ahead, both having a duty also to carry out running inspection, it is inevitable that one will tend to rely on the other to perform the work and the result will frequently be that the job is not done properly by either.

This matter of the division of responsibility and its tendency to cause men to be less alert was commented on by a number of the company's witnesses. Mr. Crate's view was that when you had two men on the left side of the cab with the same responsibility there was a tendency for one to rely on the other.

Crate, volume 23, page 3068.

Mr. Gonder said -- and I quote -- that "when one knows that he alone is responsible for an operation he tends to be more alert than if he knows that if he does ease up there is someone else who may take up the slack."

Gonder, volume 30, page 4193.

The Commission will recall in





Europe that the basis of the operation there is to put responsibility in a place and keep it there, not to divide it unnecessarily. That is their cardinal operating rule.

Mr. Emerson commented on this matter and expressed the opinion, based on his own experience, that having someone around who is not particularly occupied is a source of distraction. He also noted in one of his trip reports that the fireman dozed part of the trip. It is a normal thing when a fellow is not busy.

Emerson, volume 34, page 4699.

Exhibit 185, page 4.

This happened even though the vice-president was on the engine.

I dealt quite fully with this matter of lack of alertness because of divided responsibility and the closely related matter of distraction when submitting, in connection with yard operations, that the removal of the fireman would tend to improve the company's safety record rather than the contrary. Substantially the same points apply here, and I do not think I need go over them again.

Briefly, my submission is this: by having a fireman on the left side with duties which are a duplication of the head trainman's duties, the likelihood is that those



duties will not be performed as well as they would be if there were no fireman. This will result partly because each man will tend to rely on the other to do the job, and partly because the presence of a third man with nothing much, in particular, to do, will tend to be a distraction to the other two men in the cab who have definite and distinct duties.

That concludes what I have to say about the need for firemen to act as lookouts on diesels in road freight service.

The second point was the matter of signal passing. There can be no doubt that in the past, on occasions, there has developed the practice in road freight service for the fireman in given circumstances to be used as a signal passer as a matter of convenience to the ground crew, and, in the oddcase, to expedite the movement. I think it is likely that his use as a signal passer has increased somewhat since the introduction of the diesel because on diesels he is released from his firing duties which previously engaged part of his time at least.

Now the question before the Commission, of course, is not whether a fireman has in the past been used but,





rather, whether firemen are required to be used as signal passers for the safety and efficiency of freight operations on Canadian Pacific.

The company's position is that firemen are not required. In order to satisfy itself that they are not required, the company made a very careful check on its operations through its officers, and they were unable to find any place where a fireman was required as a signal passer while switching en route.

Mr. Fraine referred to checks he has made on the MacTier subdivision and to checks made by local officers on other parts of the railway, and stated that he did not know of any place on Canadian Pacific where switching en route could not be done with the train crew giving signals direct to the engineman.

Fraine, volume 18 pages 2303-2305.

Mr. Fraser, general superintendent, Alberta, stated there was no necessity to use the fireman as a signal passer in making moves in the territory under his supervision, which is Alberta.

Fraser, volume 20, page 2638.

Mr. Crate made a check of the Parry Sound and North Bay subdivisions and concluded



that there was no place in those subdivisions where signals could not be relayed direct to the engineman.

Crate, volume 23, pages 3024-3028.

Mr. Hooley stated there were no places in British Columbia where, if all three trainmen are used, signals cannot be given to the engineman without using the fireman, to his knowledge.

Hooley, volume 31, pages 4325.

Volume 34, pages 4800 to 4801.

In spite of these checks, in spite of the fact that the Commission heard this evidence, and that the Brotherhood heard it, the Brotherhood challenged these views and adduced evidence through their witnesses that firemen were in fact required, according to them, to pass signals while switching en route at a great many locations across the system. They laid particular stress on British Columbia.

Before the viewings of the Commission had been completed in British Columbia, I understood counsel for the Brotherhood to have modified this position somewhat and to have conceded that although it might be possible, as the company had stated, to carry out switching en route without using the fireman to pass signals, nevertheless he reserved the question





whether this switching could be done safely and efficiently in some locations without using the fireman as a signal passer.

Notwithstanding this somewhat changed position of the Brotherhood, I think it might be the simplest way if I dealt with this matter at each location across the country at which the Commission heard evidence and which it was asked to view, so that I may state the company's evidence and position with regard to it. They all deal with diesels in road freight service, although many of them, in fact most of them, took place in yards when making up trains or switching en route.

Galt, exhibit 270.

Witness Hopkins for the Brotherhood gave evidence that when a train going east has to set off cars in the yard marked "D" on the sketch, the fireman must be used to pass signals while the train is backing on the east leg of the Wye because of the curve on his side. He also stated that a train going west which has to set off cars in that yard must use the fireman on the first part of the reverse movement coming into the west leg of the Wye.

Hopkins, volume 54, pages 7612 to 7621.

Pages 7710 to page 7741.



The viewings on this location were made by the Chairman of the Commission on April 29th and by the other members of the Commission on June 21st. On both these occasions it was demonstrated that the movement by an eastbound train backing cars on the east leg of the Wye could be carried out if the members of the ground crew positioned themselves properly on the engineman's side and gave signals direct to the engineman. On the occasion of the second viewing, a movement was also carried out on the west leg of the Wye and there again it was shown ~~that~~ signals could be given direct to the engineman.

Mr. Nichol made the tests at Galt. He found that to carry out the move on the west leg of the Wye as Hopkins described, it would necessitate shoving blind for nine carlengths. Nichol said it required two men in any case to carry out this move and they could give signals direct to the engineman without difficulty and without hazard. On the east leg of the Wye at Galt, three men were required to make the move. Mr. Nichol, after making the test at the east end, expressed the view that there was no difficulty or hazard for the train crew in giving the signals direct to the engineman.

The Commission will recall that on June 21st one move was made there which, of course,



was a trick -- no one would say that that was a proper way to do it. In fact, doing it with one man was unsafe. The proper way is with two men on one end and three on the other.

Nichol, volume 61, pages 8655 to 8658.

Pages 8664 to 8669.

Now I go on to Orr's Lake -- exhibit 272.

Hopkins gave evidence that in setting off cars on the spur of the newly opened gravel pit at Orr's Lake three miles west of Galt, the curve is on the fireman's side as the cars are backed up from the main line into the spur, and when he observed the movement signals were passed from the head trainman on top of the gravel pile to the fireman.

In cross-examination it was suggested to him that if the train crew positioned themselves properly on the engineman's side, the move could be carried out by giving signals direct to the engineman, and he imagined it could be but was not certain.

Hopkins, volume 54, pages 7632 to 7653.

A test was made in September at this





location. Twenty-two cars were cut off an eastward freight train and pushed into the spur and coupled on to thirteen cars standing on the spur and the thirty-five cars pushed to a spot at the gravel pit.



Because of curvature on the main line, it is necessary for one member of the rearend crew to come up and the cars move east of the spur switch with a two-man relay to the engineman. These two men, working in conjunction with the conductor, are able to position themselves so as to relay signals direct to the engineman for movement back through the spur to the gravel pit.

An alternative method of making the move is to turn the engine at Ayr and to work on the north side, with two men giving signals direct to the engineman. That would be where the fireman would have sat if the move had been in the opposite direction, and if the engine had not turned.

Nichol, volume 61, pages 8646 to 8650 and pages 8663 to 8664.

Exhibit 348.

The trainmen positioned themselves so as to be able to relay the signals directly to the engineman. Mr. Nichol stated that they did so without difficulty and without hazard.

Nichol, volume 61, pages 8646 to 8650 and pages 8663 to 8664.

Exhibit 348.

The next point was Oakville, Exhibit 265.

Trainman Sheflin gave evidence that when a train proceeding from Toronto toward





Hamilton stops to set off cars in the yard near the Ford Company's plant at Oakville, the practice is to use the fireman on the back-up movements on the lead from the passing track. The operation, as he described it, did not involve using either the conductor or the rear trainman who stayed on the van. The reason put forward by him -- and he emphasized this -- was to expedite the movement as it did not involve using either the conductor or the trainman who, as he stated, stayed on the van. He admitted that the move could be made with signals being passed to the engineman if these men were used -- if the rearend crew came up. Mr. Fraine stated in his evidence that there was no reason for giving signals on the fireman's side at Oakville.

Sheflin, volume 53, pages 7542 to 7550 and pages 7575 to 7579.

Fraine, volume 19, pages 2525 to 2526.

Mr. Justice Kellock was at Oakville on April 29 and the other members of the Commission were there on June 21 when the move described by Sheflin was made. On that occasion, the head trainman stayed with the engine and the conductor and rear trainman walked up, cut off the cars and the cars were set off in the yard within the space of 25 minutes with all signals being relayed direct to the engineman.



It was pointed out to the Commission during its observations at this location on June 21 that if more than seven or eight cars were handled it would be impossible for the move to be made by the head trainman without the assistance of the rearend crew or the yardmaster. The move could not be made by the head trainman alone; he had to have the assistance of the rearend crew or the yardmaster. If the move was made with 27 cars as described by Trainman Sheflin, the signals would disappear and the movement would have to stop or else it would have had to be shoved blind through part of the move.

Mr. Nichol said that it was necessary to have the assistance of the rearend crew to make the move. He said that all signals could be relayed directly to the engineman by the train crew without difficulty or hazard.

Nichol, volume 61, pages 8860 to 8861 and pages 8869 to 8870.

Woodbridge, Exhibit 266.

Sheflin also gave evidence that the fireman was used to pass signals when switching at an industrial siding at Woodbridge.

MR. LEWIS: Did you refer to Exhibit 266?

MR. SINCLAIR: Yes, Exhibit 266.

On the movement he described, a steam locomotive was used. He stated that on the reverse



movement out of the siding he, as head trainman, had to work on the fireman's side when pulling the pin on the car which was being dropped into the back track onto part of the train. On that move he gave the signal for the drop to the fireman. It will be recalled that he stated he climbed the ladder and got the brake. With regard to the other members of the train crew he said one was at the switch and one on the crossing and therefore they were not in position to assist him in getting the pin and relaying signals.

I suggested to Mr. Sheflin on cross-examination that the movement could be done more safely using the main line, **because** it was not so congested but he was not prepared to admit this.

Sheflin, volume 53, pages 7550 to 7553 and pages 7580 to 7584.

Mr. Nichol made tests at this location and made a drop of a car from the siding onto the train standing in the back track. He also made the drop by using the main line switch rather than the back track switch. In both of these moves the signals were passed direct to the engineman. One member of the ground crew got the pin, the other signalled the engineman and the other got the switch. He ~~set~~/up the move in such a way that it was not necessary to flag the crossing -- it was not necessary to





place one of the train crew on the crossing -- so therefore he had the entire train crew personnel to assist in the move. On the move using the main line switch, the engine and car were both stopped before reaching the crossing. By doing it that way it therefore also eliminated the necessity of putting a man on the crossing. Mr. Nichol said that it was possible to do the move the way Mr. Sheflin had described it but that the methods which he used were safer because they did not have to be made at as high a speed and there was more room to make the drop and therefore less chance of anything happening.

This can be found in the evidence of Mr. Nichol, volume 61, pages 8658 to 8659.

Exhibit 350.

Medonte, Exhibit 267.

Mr. Sheflin also gave evidence as to the use of the fireman as a signal passer at Medonte. He filed as Exhibit 267 a sketch of the place. He stated that when his train is going north it stops to set off cars in the Port McNicoll yard at Medonte. He agreed that with one other member of the train crew coming up, the signals could be given direct to the engineer but suggested that it would take extra time. He went on to say that when a south-bound train sets off cars in the siding on the east side of the main line the signals are



relayed through the fireman.

Sheflin, volume 53, pages 7558 to 7564 and pages 7582 to 7583.

Mr. Fraine gave evidence that the practice of using the fireman as a signal passer at Medonte had been discontinued and that the switching could be done as fast, if not faster, by working on the engineman's side.

When Sheflin was on the stand I asked him if he did the moves that way when the officers were around and he said, "Oh no, not if they are there."

I would refer the Commission to Mr. Fraine's evidence, volume 19, pages 2522 to 2525.

Moves were made at Medonte when the Commission were there on June 25 and I think it was clearly demonstrated that there was no difficulty in carrying out the work safely and efficiently without using the fireman as signal passer. Moves were made then into the Port McNicoll yard by using the head trainman alone giving signals direct to the engineman. On the first move it was done both ways. On the first move he gave them on the fireman's side and on the second move he gave them on the engineman's side but it was obvious that the move would have been better, more safe and more efficient had the second man been used so





that one man would be available to ride the cars back into the yard at the point of movement. One man would be available at that particular place to ride the cars into the sloping yard and to be at the point of the movement when the cars were set down.

THE CHAIRMAN: Mr. Lewis, I have just been thinking that when you come to your turn you will be stating your position on this point that we are now discussing. I was wondering whether it would be convenient for you now to state what your position is going to be? If so, we can appreciate these various places with a little more intelligence as they are mentioned -- they have to be mentioned. Is it convenient for you now to say what your position is on this point or would you prefer to reserve everything until you hear Mr. Sinclair in full? I do not suggest something to you; I am just asking you.

MR. LEWIS: I appreciate your request, Mr. Chairman. Are you thinking of it in terms of following what Mr. Sinclair says or in terms of Mr. Sinclair not having to deal with all the locations?

THE CHAIRMAN: Well, I am wondering about it from both standpoints. We have all been over the ground and it is simply rehearsing what we have all seen. I am just thinking of not using up unnecessary time. I am not



D-7

Mr. Sinclair.

suggesting anything to you. If you prefer that these things be done ad seriatum as Mr. Sinclair is doing it, all right, but it just struck me that you will be stating your position in a few days and if you prefer to leave it until then it will be all right.

MR. LEWIS: May I suggest that we have a break for a few minutes so that I could have a little consultation on that point?

THE CHAIRMAN: Very well.

---Recess.

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Mr. Sinclair

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MR. LEWIS: I do wish very much to cooperate with the Commission and my learned friend, but I have given this a little thought, as well as consulted with my advisers but this is mainly my thought. I am sorry to say that I do not think it would be of assistance to me in presenting the position of the Brotherhood to the Commission at this stage to attempt to deal with one subject in isolation, and I would rather not do that.

THE CHAIRMAN: That is quite all right. You prefer to have this dealt with seriatim.

MR. LEWIS: Whether my friend deals with every location or whether he makes a summary, is for him to decide.

THE CHAIRMAN: That is what I was really speaking about, whether these things have to be dealt with seriatim or whether Mr. Sinclair really comes down to this, that there is no place where a fireman is required to give signals. That may be a convenient way for Mr. Sinclair -- that is all I am interested in, to deal with this subject, by making that general statement. You would then deal with the matter in the way you see fit and if it is necessary for Mr. Sinclair to deal with Fernie and all these other places in reply,





he can do it in reply. Otherwise it seems to me that we may be wasting some time. That is my only object in speaking.

MR. LEWIS: If it will help on that point I can say to the Commission now that I do not propose to deal with the locations one by one.

THE CHAIRMAN: That is really all I was asking. Then it seems to me that unless Mr. Sinclair has very good reasons for dealing with them one by one-- of course, my colleagues have to agree with my view as I am expressing only my own view -- it might be sufficient for Mr. Sinclair to say, "My contention is that there is no place." We would then hear your argument and Mr. Sinclair would have the right to reply, and if you wanted to reply to Mr. Sinclair of course you will have an opportunity to do so. Would not that save time?

MR. LEWIS: That of course would be Mr. Sinclair's decision; it would be between him and the Commission. I would not presume to say anything.

HON. MR. McLAURIN: You are not going to hold Mr. Sinclair's hand?

MR. LEWIS: He does not need me to hold his hand and I do not propose to presume to make any suggestions on that score.



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MR. SINCLAIR: Mr. Chairman, all I can say is that I am glad to be relieved of dealing with this kind of thing. I have my notes on each one of them.

I can do one of two things, either leave them for reply, but I would expect my friend in dealing with this matter -- if he is going to say -- he has in his statement to the Commission as I understand it said that this is switching en route and he admits that it is possible to pass them directly to the engineman. But he reserves the question of safety and efficiency. I think that was his position in stating it as it was put to the Commission.

THE CHAIRMAN: Is that right?

MR. LEWIS: Yes.

THE CHAIRMAN: That is what was in my mind.

MR. SINCLAIR: If my friend is going to say that it cannot be done safely and efficiently, then he should do it by the locations which he feels present the most difficulty, and then I can deal with them in reply.

THE CHAIRMAN: We cannot dictate to Mr. Lewis nor can we dictate to you, but it would seem to me, subject to what my colleagues think, that it would be sufficient at this stage for you to state



what I understand your position to be, that there is no place. Then we will hear Mr. Lewis and you will have the right to reply.

The matter perhaps could then be dealt with at some economy of time. We have to think of that as well as of other things.

MR. SINCLAIR: Quite so. I will just be postponing what I was going to say now, but in any event it would be a postponement at the worst.

THE CHAIRMAN: Mr. Sinclair, this point I have raised, we are not at one on it so I simply say to you: take your own course. If you prefer to proceed as you have been proceeding, do so. If you prefer to take any other course, you take it.

MR. SINCLAIR: I think with your permission what I will do is this. I will postpone dealing seriatim with all these locations, but if a point is raised by my friend in his argument to the Commission I will then deal with that and any other point that may be raised seriatim. If he does not do that, if he makes a general statement I will deal with it in that way. But if he refers to specific locations I shall deal with those locations.

THE CHAIRMAN: We will adjourn for just a very few minutes.

---Recess.





-- On resuming.

THE CHAIRMAN: Mr. Sinclair, you just proceed as you have stated. You prefaced that statement with "with my permission". You do not need any permission. It is your decision. You proceed as you have decided to do.

MR. SINCLAIR: Very well. What I intend to do is not to deal with these points any further seriatim but if my friend makes a general statement in reply I will deal with them seriatim and if he mentions specific points I will analyze those specific points. I will now go on with my general submissions based on the evidence with regard to the specific locations, which evidence is there and there in great detail particularly with regard to British Columbia.

THE CHAIRMAN: It may turn out that this course will save time. It may turn out that it will not.

MR. SINCLAIR: That is right.

THE CHAIRMAN: Very good.

MR. SINCLAIR: It is my position that in the light of the tests made by company officers and in the light of the observations made by the company officers and the checks made by the company officers and in the light of the observations made by the commission and the admission of counsel of record -- I refer to his admission of just a moment ago when he



said yes in answer to the Chairman -- it is apparent that the members of the train crew can always so position themselves as to give hand signals direct to the engineman.

In addition, in trains that have more than one unit in the locomotive consist, the locomotives are generally operated with two locomotives facing in opposite directions and therefore you have in effect a dual control locomotive operating within the consist. You can have the engineman on either side. As well, of course, any location, as the Commission has seen and as the evidence of Mr. Smith shows can be switched without using a fireman if the locomotive is equipped with radio.

It does seem to me and it is my respectful submission that it is of some significance that the very positive evidence given by a number of the principal Brotherhood road witnesses was completely disproved by demonstrations and moves on the ground. I refer particularly to Doull, Hobbs, Sanders, Brunner, and I also have in my mind Mr. Connor and Mr. Sheflin. Notwithstanding the very definite evidence of these witnesses that many moves could not be made without a fireman to pass signals, it has been demonstrated clearly that those moves can in fact be made without a fireman and can be made safely and efficiently and, indeed, that some of the moves that they described, if they were done that way,



could only be done in an unsafe way by shoving blind.

THE CHAIRMAN: By shoving what?

MR. SINCLAIR: Blind, with the signals out of sight for part of the movement.

THE CHAIRMAN: Have you got an illustration of that?

MR. SINCLAIR: Yes, Oakville, Medonte, Galt.

MR. LEWIS: If done by one man.

MR. SINCLAIR: Done as the witnesses called by the Brotherhood described it.

I do not for a moment wish to be misunderstood in any way as suggesting that these Brotherhood witnesses came to the Commission and tried to mislead it. I do not think that is so. I do think it is clear though that they were all mistaken. In my submission there is a reason for this, that because a fireman has always been in the cab of diesel locomotives with which they have worked and they have always been able to throw signals to that fireman if it suited their convenience, they had come to believe they could not operate without the fireman acting as a signal passer. Mr. Brunner was one witness who took a very positive position that he had tried, and I think he went a little far. However, notwithstanding what he said, I submit that if these witnesses had tried and had thought the





situation through they would have been quick to recognize that signals can be given direct to the engineman in all these locations with safety and with efficiency.

There is another point that comes out of their evidence. They having been shown that they were wrong in their opinions as to the necessity of using the fireman as a signal passer, I think that is of some significance and in my respectful submission ought to be taken into account in considering how much weight should be given to some of their other opinions, for instance, that the fireman is necessary as a lookout. Again it is my submission that if these men had had the experience of operating these units without a fireman they would not have taken the stand that they did or have given the evidence that they gave.

Generally on the matter of safety and efficiency in road operations may I say this. When I was dealing with yard operations I reviewed the evidence relevant to the question whether the safety of operations would be impaired or improved if firemen were not used as signal passers. My submission was that the company's safety record would, if anything, be improved. My submission with respect to switching en route is the same, that is, that the safety of these operations would, if anything, be improved if firemen were not used as signal passers, and for



substantially the same reasons as I gave in dealing with signal passing in yards.

THE CHAIRMAN: You have really already covered that.

MR. SINCLAIR: That is what I am saying.

THE CHAIRMAN: Even in connection with road service because I have a note of that already.

MR. SINCLAIR: What I was going to do to draw this together was to refer you to Mr. Fraine and one witness from the Brotherhood and then to move on to an exhibit that has been filed. Mr. Fraine, as you will recall -- I gave you the reference earlier, Volume 18, pages 2307 and 2308 -- said that if you work on one side one time and on the other side another time the first thing that happens is that you have men on both sides trying to give signals and that usually that causes difficulty sooner or later.

As I have said earlier, there were a number of Brotherhood witnesses who agreed that the best switching practice is to give signals direct to the engineman. I mentioned Doull.

Doull - Volume 37, page 5107.

Now, trainman White was on the stand at Calgary.

THE CHAIRMAN: He is a conductor.

MR. SINCLAIR: He was a conductor, yes. He states that it was preferable to give signals directly to the engineer and that he always



tries to pass signals to the engineer.

White - Volume 58, page 8137.

Mr. White felt there was some difficulty at elevators and you will recall that he felt that there the signals should be given to the fireman.

At Didsbury I think it was proved conclusively that White had not thought his way through that situation.

HON. MR. McLAURIN: That would depend on which way the locomotive was facing and whether the engineer was on the elevator side.

MR. SINCLAIR: When he was on that side there was no difficulty and the move we did at Didsbury was where the elevator was next to the side where the engineer was. I recall to the Commission that these people were worried about these spouts, but when the members of the Commission as well as other members of the party were on the engine they put out their hands when sitting on the seat and tried to reach the spouts and you could not touch them. White was also under a misapprehension as to what you could see looking back with respect to where a man was standing to give signals, and it was demonstrated to members of the commission in the seat where and how far back a man could be on the top of a car and still give signals without the person on the seat having to put his head out at all.

As I say, it was demonstrated that there was no hazard in putting your head out and you





could see farther back again. I am sure White had not thought that through, that you could be on the ground and give signals between the elevators if you desired to be there.

THE CHAIRMAN: Referrring to what you said a moment ago, there certainly could have been no intention on Mr. White's part to mislead. Personally I was very much impressed with Mr. White. Your other argument that he may have been mistaken is quite open to you, of course.

MR. SINCLAIR: That is what I am saying. I had him in mind. I thought he was trying to do the best he could from his recollection.

THE CHAIRMAN: As I recall, from his experience, the fall he had, he preferred not to go on top of cars although he said that was normal practice or something of that kind and that was part of their duty. I cannot quote him exactly.

MR. SINCLAIR: That is right. White's evidence, to which I referred, was Volume 58, page 8137. I do not think there is any doubt anywhere that the best switching practice, the safest switching practice and the most efficient switching practice is to give your signals direct to the man who is going to control the movement of the locomotive and that is the engineman.

THE CHAIRMAN: That was discussed the other day and that is common ground.

MR. SINCLAIR: That is right. This is the point I am coming to. As a result of the



difficulty of getting men to carry out verbal instructions and on account of some misunderstandings at times when people get forced into positions -- some reference was made to that in these proceedings -- the company issued a bulletin across the system, Exhibit 331. That bulletin was addressed to all conductors and enginemen and reads:

"To conductors and enginemen:

In switching movements the safe and proper practice is to give signals directly to the engineman. This practice, followed in yard operations, is also applicable to switching performed by road crews. Conductors are responsible for organizing their work and positioning themselves and trainmen accordingly."

In the matter of efficiency there was some suggestion by Brotherhood witnesses that if the fireman could not be used as a signal passer it would in some locations, they said, mean that men would have to go on top of cars more often. I have dealt with that suggestion in regard to yards. Again, when switching is done en route it is done at slow speeds and it is done under the watchful eyes of the whole train crew when they are alert, on their job and properly positioned. I admit that on the road the cuts may be longer than in switching in yards but



there is no difference in the hazard or the risk, in my respectful submission. The risk is negligible when proper practices are followed by the men going on the cars.

Again, there is the matter of trouble arising because of weather conditions and again the answer is the same. If the weather is such as to introduce any hazard, then the men should cut down the size of the cuts as they do in the yards, as they are compelled to do whether there is a fireman there or not. For example, there is the fog at Vancouver or at St. Luc in Montreal, both of which were mentioned in evidence.

However, it is rare that the conditions are so extreme that normal switching practice cannot be followed. There is an answer to that and the answer is not a fireman. The answer is to cut the size of the cuts and slow down the movement to a snail's pace if that is necessary.

There is one other thought I want to put before you on this matter. Let me assume that there is some small additional risk. I say there is not but let me assume that there is some small additional risk. My submission is that that is more than offset by compelling the men to use the proper practice of relaying signals direct to the engineman.





THE CHAIRMAN: Let me understand you. When you say this could be overcome by reducing the size of the cuts, you mean by that that in such circumstances it will not be necessary for the men to go on top?

MR. SINCLAIR: That is so.

THE CHAIRMAN: You did not say that, but I assume that was what you meant.

MR. SINCLAIR: The other point I wanted to make was this: that on the assumption that there is some risk -- I say there is not, but assuming that there is some additional risk in going up on top of cars the additional times they will go up on top of the cars when the firemen are removed -- assuming the situation is as my friend's witnesses have put it, though I do not agree with that for the reasons I have given -- I say in answer to that that the additional risk is more than offset by compelling the train crews to use the best, safest and most efficient practice of relaying signals direct to the engineman, which they will do -- which they will do -- if the fireman is not there.

Of course there are, as tests have demonstrated to the Commission, a number of moves where only two men are needed on the ground and where the third man, if there is an advantage, can position

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himself so as to take signals from his mate and relay them by hand to the engineman across the cab to the engine or from a side step up to the engine.

Now as to the delay, as to the suggestion about delay and suggestions that the absence of firemen would affect the efficiency of this switching en route and that there would be delay if it was necessary for the rear crew to come up to assist, I think it has been demonstrated that sometimes, because the fireman is there, some conductors, some trainmen, have not been carrying out their work as they should have been doing -- they have not been coming up when they should have been coming up; they have not been participating in the switching as they should have been participating in the switching. Rather, they were leaving it to others and not doing the job as safely and efficiently as they might otherwise have done by being actively engaged in the work in hand.

But let us assume again -- I am saying that I disagree; I do not think it is supported by evidence -- that there is some delay as my friend's witnesses have suggested. The over-all effect of such delays on the efficiency of the company's freight operations would obviously be negligible. Evidence was given by company



witnesses that relatively little switching is actually done by through freight trains. Exhibit 108, which was filed by Mr. Fraine, shows that the average number of stops for through freight trains for switching en route on the Winchester subdivision is .52 -- that is, as the Commission will recall, from Montreal to Smith Falls; on the Oshawa subdivision, .86; on the MacTier, north from Toronto, .60. Taking these three subdivisions, this amounts to substantially less than one stop for switching per trip. Exhibit 125, which was filed by Mr. Crate shows that the average number of stops per through freight train for switching en route on the North Bay, Cartier, Parry Sound and Thessalon subdivisions there is from .42 to .61. In other words, trains travelling over those subdivisions average about one switching stop every two trips.

Corresponding information was given by Mr. Fraser in exhibit 19 dealing with the prairie region. Mr. Fraser's exhibit shows that the average number of stops per freight train for switching en route by through freights on the Keewatin, Broadview, Swift Current, Brooks, Laggan and Red Deer subdivisions ranges from .11 to 1.6 stops per trip over the subdivision.





Keewatin, of course, is in west Ontario, Broadview is in Saskatchewan and Red Deer is north from Calgary.

Information similar to that is not available for British Columbia in this regard, but the Commission has visited British Columbia and it knows that there are relatively few industrial situations in British Columbia spread along the line -- it is not like the prairies where grain elevators and small communities are encountered every few miles. Industrial life in British Columbia is more centralized. It is my submission that there is no necessity -- and the Commission has seen both the north line and the south line -- for too much switching to be done. There is more on the south line, that is true.

Now, assuming again that the removal of the fireman would cause some delay, and assuming that every time a train stopped there would be some delay because of switching en route by having the rear crew come up, it is my respectful submission that exhibits 108, 125 and 119 with which I have just dealt show how little effect that delay, even if my friend's submission is right, would really amount to.

The fact is, in my respectful submission, that the removal of the fireman would

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the first of the year.

It is a very common

to find the first of the year

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not cause delay. Certainly it can be said that it would not happen very often. The matter really comes down to something which is of very small consequence.

Now we have, of course, as the Commission has been told, way freights on the Canadian Pacific, or assigned switchers setting out and picking up and spotting at numerous stations and, that being so, they are shorter trains and the rear end crew is readily available and accessible for work at the headend. This is where most of the switching en route is performed. Mr. Fraine stated that the amount of time saved by switching en route through the fireman is not sufficient to be of any major importance to the railway.

Fraine, volume 18, page 2305.

Mr. Crate said that the delay in a conductor coming up to assist in switching would be small compared with the number of stops the steam engine was required to make for fuel and water. Of course, the diesel does not stop for fuel and water nearly as often as does a steam engine.

Crate, volume 23, pages 3031 to 3032.

My submission is that any delay which may be caused by not using the fireman as a signal passer has been very much exaggerated



by Brotherhood witnesses. I mentioned earlier Mr. Smith's evidence on switching tests conducted at specific locations in yards and at road points including road points on the prairies. There were also, of course, his tests in British Columbia. Mr. Smith gave evidence, and exhibits were filed, dealing with tests conducted at nine road locations in British Columbia brought up by the union. In my submission these were representative of all the types of moves advanced by the Brotherhood and Mr. Smith found that even when the fireman is present, when hand signals are used to make the moves described it is necessary for the rear end crew to assist sometimes both, sometimes one. Mr. Smith found that from a standpoint of time there was no disadvantage in following the admittedly better practice of giving signals direct to the engineman rather than using the fireman as a signal passer. Further, he analyzed each situation. Being there, he saw the tests conducted and expressed his experienced opinion that the trainman in making these moves and giving signals back to the engineman can do so without difficulty or hazard.

Now there is a memorandum of Mr. Lewis and myself --

THE CHAIRMAN: Mr. Smith had one or two exhibits on that point, did he not?





MR. SINCLAIR: Yes, he had. I was going to refer to each individually, but --

THE CHAIRMAN: Well, perhaps you could look them up and let us have them later.

MR. SINCLAIR: I think I have them. Here are the road ones, sir:

Reaburn - Exhibit 318

Didsbury - Exhibit 319

Field - Exhibit 320

Golden - Exhibit 321

Illecillewaet - Exhibit 322

Sicamous - Exhibit 323

Monte Creek - Exhibit 324

Drynoch - Exhibit 325

Castlegar - Exhibit 326

Yahk - Exhibit 327

Wardner - Exhibit 328

Moose Jaw - Sketch only filed --  
Exhibit 329

Mr. Smith also dealt with this matter in evidence. Mr. Phillips, in evidence also dealt with Yahk. Now my friend and I made this memorandum on switching in British Columbia and that showed, as Mr. Smith demonstrated with his tests, that there are a number of ways on each location by which signals could be relayed direct to the engineman.

Mr. Smith's tests also covered the use of radio and, of course, as he said, when radio is used only one trainman is involved in giving instructions to the engineman.



The Commission will recall that in some cases there was no time advantage in using radio and in other cases there was. In some instances the difference was very small -- almost negligible -- and sometimes it was about the same. In some cases the giving of the signals to the fireman was a little slower than giving them to the engineman and in other cases it was about the same.

It is the company's policy, and this was stated by Mr. Smith, that if firemen are removed from diesels in freight service the company intends to equip freight trains operating west of Calgary and Fort Macleod with radio. Now, he pointed out that this was not due to switching alone. He pointed out that in the British Columbia area there were, through the use of radio, advantages in expediting train movements which have nothing to do with the firemen. For instance, he mentioned the making of the brake test and enabling the rear end crew to inform the head end when they were into clear or when they had restored the main track switch to normal after leaving the siding. The Commission saw in the mountains how that sometimes slows up things a little bit when you could not see whether the tail end was on or



whether you had got by the switch or whether you could move up. Mr. May agreed on behalf of the enginemen's Brotherhood that it was an advantage to know your tail end was on, your switch was lined and you were ready to pull out.

In many parts of the country you can easily see that, but it is sometimes difficult in mountain terrain.

Smith - Volume 60, pages 8427-8436.

THE CHAIRMAN: You referred to some memoranda made between counsel in connection with the western trip and I did not understand your reference to that.

MR. SINCLAIR: I made a memorandum for Mr. Lewis and myself outlining the company's position and showing how the moves could be made by giving signals direct to the engineman at every point brought up by the union covering Field right through to Vancouver and the south main line back to Fort Macleod.

These were filed, some at Vancouver and some when we started proceedings here. There were a great number of them. My friend's admission in regard to them, as he has generally applied to all these points -- and I wish to state this again -- is that he agrees signals





can be passed directly to the engineman but he reserves the safety and efficiency factor.

Mr. Smith then took the nine locations in British Columbia and in my submission clearly demonstrated that by giving the signals direct to the engineman there was no loss of efficiency and he did the same with regard to safety and there is also the company's bulletin No. 331 which has been put into effect which I say also clearly demonstrates that the company's officers, after their checks on matters of that kind, have come to the conclusion that there is no location where it cannot be done.

THE CHAIRMAN: I was just asking about your reference to the memoranda. I did not follow that, but I do now, thank you.

MR. SINCLAIR: There is one other significant point. If there is a location where the removal of the fireman does result in a delay which is of significance or consequence the locomotive can be equipped with dual controls. Mr. Smith gave evidence concerning a newly developed electric dual control which is a marked advance in this field. It can be moved from engine to engine and



it can be moved around on an engine. It is also inexpensive -- it is much cheaper than the duplication of standard control stations such as was observed by the Commission on the dual control diesel at Ashbridge's Bay in Toronto. Its flexibility and ease of operation was demonstrated to the Commission in Ottawa last week.

Mr. Smith's evidence -- Volume 60, pages 8462-8465.

It will be seen, therefore, that even if the removal of the fireman were to cause delays in switching and those delays were to affect the efficiency of operations adversely -- and of course I contend that the evidence proves they would not -- there are technical methods at hand which are easily applied, easily accessible and easily used to eliminate such delays.

In the result, I respectfully submit that the Brotherhood's contention that firemen are required on diesels in road freight service to pass signals, because if they are not so used the safety and efficiency of operation will be impaired, has no merit whatsoever.

In dealing with the need of a fireman for lookout purposes, I referred to the experience with the Canadian Pacific and other railways in operating diesels



without a fireman in road freight service. I have mentioned here numerous times the successful operation on the Canadian Pacific without firemen and referred in particular to the Canadian Pacific electric freight operations in the Galt area, ~~the~~ diesel freight operations on the Arcectook Valley Railway, the freight operations of the United States inter-urban electric service, the operations of the Quebec North Shore Railway and the European freight operations and I do not propose to review this evidence again.

Switching en route has, of course, been carried on in all these freight operations and there is no suggestion that it has not been carried on safely and efficiently. On the contrary, the evidence is that these freight operations are operated quite satisfactorily without firemen.

In further elaboration of that point I wish to recall to the Commission in particular the switching en route which it observed in Europe where of course there was no fireman on the engine.

On September 12 the Commission observed a 600-horsepower diesel in operation from Bellegarde to Les Aubrais. A photograph of this diesel was filed as Exhibit No. 176. It had dual controls,



1. The first part of the paper

is devoted to a general introduction

to the subject of the paper

and to a brief review of the

literature on the subject

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a partly elevated cab and no dead-man control. The crew consisted of an engineman and a guard who rode the locomotive between stations but who, as I stated, had no responsibility whatsoever except to stop the train if the engineman became incapacitated, and an under-shunter riding back on the train.

When making switching moves en route the stationmaster supplemented the crew on the train to make up a total crew of four. Now, a number of switching moves were made en route on that day in places where the clearances were restricted. Indeed, there was a spot made in an elevator. In my submission all of these moves were made without difficulty by the three-man crew and the engineman alone on the engine.

On the afternoon of September 19 the Commission observed a freight train being made up at Lyss in Switzerland and also observed switching at three intermediate stations on that day. In making up the train at Lyss there were never more than two men in the signal sequence. There was an engineman alone on the engine and a ground crew of four men, but only two men were used in the signal sequence. The other two were used in making the



couplings, or standing between the cars as the cars were shoved back on them to make the couplings or, in the odd case, riding a cut.

With your permission, Mr. Chairman, I will spell the name of the next location to which I wish to refer. It is as follows: S-u-b-e-r-g - G-r-o-s-s-a-f-f-o-l-t-e-n. At Suberg-Grossaffolten, which is in Switzerland, the Commission observed a number of moves being made with three men being used for signal passing. This is on the same intermediate train. The fourth man of the ground crew was making couplings and riding cuts. It was pointed out here to the Commission by the Swiss people that the reason it was necessary to have the men ride the cuts was because there were no automatic couplers. That is why they had the man doing that work. Of course, that is not required on the Canadian Pacific.

Now, the Commission will recall that at this point, Suberg-Grossaffolten, was an extremely difficult place to switch. The switching lead was alongside the station. It will be remembered that the switching lead was on the closest track to the station, right alongside the station platform. There was a double reverse



curve and a very high platform. The Commission will also recall that the fellows had to bend down and stand up and go wide and put themselves in all sorts of unusual positions to get their signals relayed up. Why did they do it? They had to do it because there is no way of getting on top of the cars. There were no side ladders. Yet, in spite of that, although they could not get on top and in spite of the fact they could not ride side ladders and pass signals direct to the engineman, these three men working from the ground from a double reverse curve with a high platform right up against the station passed the signals up to the engineman and carried out the switching with real dispatch, as the Commission will recall.

The same thing took place at the next two stations.

After observing the switching in these stations the Commission will recall that it was agreed by the Canadian Pacific that while it had substantially more switching to view at subsequent stations it was not necessary for any further views to be made of switching en route on freight trains in Switzerland.

On September 24 when the





Commission was up in the Netherlands it observed a train being made up at Enkhuizen, spelled E-n-k-h-u-i-z-e-n. The crew here consisted of an engineman alone and one ground crew who was a member of the station staff -- one groundman. He gave all the signals, he coupled and uncoupled the cars, he operated the hand-thrown switches, he went wide, he looked after the team track, he saw that the men were called, and throughout all that switching the engineman remained on the right-hand side and the man on the ground crossed over to get switches on the left-hand side and then returned to the right to give signals just as they do on the Canadian Pacific before passing the signal up to the engineman.

Now, that team track switching was interesting. The Commission will recall that the switching was done there on the team track, that there were men unloading coal from cars that were on the track, that they were told the switching was going to be done by the groundman and the switching went on just as it is required in switching team tracks under Exhibit 27.

The train then moved down to



Bovenkarspel, spelled B-o-v-e-n-k-a-r-s-p-e-l. I particularly wish to have the Commission recall Bovenkarspel and the switching observed there. Again it was conducted by an engine-man alone on the engine and one man on the ground and the dispatch with which the switching was conducted and the authority with which the light engine moved through the yard was noticeable to everyone. The switching was performed there in the harbour tracks around sharp curvatures without difficulty. Throughout the Bovenkarspel area there were people crossing the tracks, going to and from the station and people were working around the big produce plant which is there while it was being switched. In my respectful opinion if there was any doubt of the ability to switch safely and efficiently without two men on the engine, the switching observed at Bovenkarspel was an illuminating experience.

THE CHAIRMAN: I think we will make a switch here, Mr. Sinclair.

---The commission adjourned at 12.30 to resume at 2.00 p.m.



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Wednesday,  
October 30, 1957.

AFTERNOON SESSION

---The Commission resumed at 2.00 p.m.

MR. SINCLAIR: Mr. Chairman, as I mentioned, we were dealing with the European situation. In Europe none of the cars have side ladders, end ladders, or running boards on top of the car. Accordingly it is much more difficult for the ground crew in yards or the train crew on the road to ride cars and give signals, and of course they cannot give signals from the tops of cars. As the Commission knows, throughout Europe there is a large amount of overhead electrical installations and for this reason there cannot be people on tops of cars.

THE CHAIRMAN: All signals have to be given from the ground.

MR. SINCLAIR: That is right, or from sill steps or end platforms. The wide use of dual controls in part overcomes this difficulty. In spite of these restrictions, in placing the men to relay signals the Commission will recall that the switching work was done with great dispatch and efficiency and safety.

That is the end of my review of





the evidence as to the need of the fireman as a signal passer. In my submission, that evidence shows that a fireman is not required on diesels as a signal passer when switching en route in road freight service and that signals can always be passed directly to the engineman if the members of the train crew position themselves properly. The contrary evidence of the Brotherhood witnesses has been demonstrated to be wrong.

The evidence also supports the view that when signals are passed directly to the engineman operations are likely to be carried on more safely and the efficiency of the operations will not be impaired.

This brings me to the third of the purposes for which the Brotherhood witnesses have suggested the fireman is required, namely to give mechanical assistance to the engineman.

The opinion of the technical officers of the company is that the fireman is not required to give mechanical assistance to the engineman. This opinion was expressed by Mr. Woodland, Division Master Mechanic for the Winnipeg Terminals and the Portage Division, Canadian Pacific. Mr. Woodland is an officer of the company



who has been intimately associated with the operation of diesels in Western Canada since diesels for road service were first put into service there in 1949.

Woodland, Volume 24, pages 3161-3170.

Volume 25, page 3344.

This opinion was also that of Mr. O'Brien, Master Mechanic of the Smiths Falls Division, and of Mr. McClean, Assistant Diesel Inspector of the Quebec District.

O'Brien, Volume 26, page 3543.

McClean, Volume 27, pages 3610-3611.

Mr. Emerson, Vice-President of Operation and Maintenance, stated that:

"The simple fact is that the advent of the diesel engine has removed the last vestige of the mechanical duties of firemen and there is nothing left for them to perform."

Emerson, Volume 32, page 4536.

An analysis from the cross-examination of the company's witnesses and from the evidence given by the Brotherhood witnesses would show that the position being taken by the Brotherhood is that the fireman is required to



give mechanical assistance to the engine-man by:

First, checking supplies and equipment when taking over the locomotive.

Two, patrolling units when in operation to check for mechanical failures and for fires.

Three, resetting protective devices when alarms occur.

Four, making repairs when mechanical failures occur.

I would like to review the evidence with respect to each of these matters and to show why, in my submission, the engineman does not require the fireman to assist him in any one of these four ways.

First, checking supplies and equipment. When the first diesels were introduced into road service on Canadian Pacific, the engineman with the fireman's assistance was expected to make checks on diesels corresponding to the checks he had been required to make on steam locomotives. He was expected to check, not only the equipment but the supplies. In the case of diesels this meant checking the fuel oil, lubricating oil, water, and matters of that type.

There may have been some





justification at one time, therefore, for thinking that the engineman required the fireman to assist him in making these checks.

As the company gained experience in the use of diesels in road service its view as to the necessity, and indeed the desirability of having the engineman or the fireman check the supplies changed. The responsibility for supplying diesels with fuel, water, lubricating oil, sand and other supplies is on the shop forces and it is the responsibility of the shop supervisor to make sure that a diesel locomotive has been properly supplied before it is taken over by the engine crew.

The company came to the conclusion that no purpose is served by having the engine crew make a further check of the locomotive and neither the engineman nor the fireman is now required to make such a check. If a diesel should run out of fuel the members of the engine crew, not only are not disciplined, they are not even questioned.

Fraine, Volume 19, pages 2436-2444.

Woodland, Volume 25, pages 3308-3311.



Apart from the fact that the company does not consider it necessary for the engine crew to check the supplies, the company has found that it is not desirable to have them do so. So long as it was the duty of engine crews to check supplies the company had difficulty in stamping out the practice of enginemen requesting the addition of small amounts of lubricating oil when it was not necessary. Because of the possibility of contamination the company tries to avoid adding lubricating oil at points other than maintenance bases. A diesel uses approximately 100 gallons of oil a month and the practice is to add approximately half of that amount, or 50 gallons, twice a month.

Woodland, Volume 25, pages 3273-3275.

The company also found that engine crews, because of their natural concern for water on steam locomotives, requested additional cooling water at subdivisional terminals when there was no need for it. It took the company a long time to stamp out this practice.

Woodland, Volume 25, pages 3297-3299.

Brotherhood witness Doull recalled that the diesel maintenance



forces were constantly bothered about adding cooling water until they finally told engine crews to leave it alone.

Doull, Volume 37, pages 5244-5245.

The early constructions contained in Exhibit 116, dated June 1, 1952, that the engineman must see that the diesel unit is properly supplied with fuel, water, lubricating oil, sand, tools and equipment, has been changed, as Mr. Fraine pointed out, by the bulletin issued in November, 1956, which is Exhibit 114. It will be noted from this latter exhibit that the engineman is not required to check the supplies, but merely to check certain equipment. The head trainman as well as the engineman is required to check the flagging equipment.

Fraine, Volume 19, pages 2436-2448.

There can be no doubt, in my submission, that the checks now required of the engineman, as indicated by Exhibit 114, can be carried out without the assistance of the fireman.

Fraine, Volume 18, pages 2359-2360.

I come now to the second point that I mentioned earlier, that is





patrolling units when in operation to check for mechanical failures and for fires.

The early diesels used in road service on the Canadian Pacific were car body units, A and B units. It was possible in that type of unit for the fireman to observe the operation of the diesel while it was moving over the road.

On the early diesel units -- by "early" I am referring now to those manufactured before 1949, before Canadian Pacific first got any of their own -- there were a number of devices which had to be operated manually. Reference was made in the evidence to manually operated shutters, manually operated fan controls, filters which were adjusted manually, and to hand-primed pumps. On the early diesels the fireman was required to operate or adjust these manual devices as the locomotive moved across the road.

Decided advances, however, were made during the period prior to 1949 and when Canadian Pacific began purchasing its diesel road power the manually operated devices which I have mentioned had become automatic. Improvements had also been made in the design and materials used in the diesels and lubrication and



insulation had been improved. As a result of these technical improvements the reliability of diesels had increased greatly.

Woodland, Volume 25, pages 3266-3272.

Mr. Loomis pointed out that the demands of the Brotherhood in the United States for an additional man on diesel locomotives to perform mechanical duties caused the railways and the manufacturers to seek to make the diesels more automatic and do away with the necessity of work being done in the engine room of the A and B units.

Loomis, Volume 28, page 3906.

Mr. Loomis referred to the report of the 1954 Arbitration Board in the United States which pointed out that:

"Engine room responsibilities have been steadily decreasing with the perfection of automatic operating devices."

Loomis, Volume 28, pages 3906-3912.

Mr. Kiley referred to another passage in the same report which stated that:

"The evidence shows, we think, the change from steam



"to diesel power left little or nothing for the fireman to do."

Kiley, Volume 28, page 3950.

On early diesels in road service in the United States the fireman was required to check gauges while the diesels were in operation and record readings. Apparently it was felt that this information would be of value to the maintenance forces.

When Canadian Pacific introduced diesels into road service in Canada it was thought by some of the company's mechanical officers that this practice should be adopted. A form was prepared setting out the routine duties of the fireman before leaving the shop track and the periodic inspections to be made by him during the run and containing a sheet on which he was to record hourly inspections made in the engine room during the run.

This Form 604, which appeared as a temporary form dated June 1, 1949, was filed as Exhibit 129. There was a revised temporary form dated December 12, 1949, which is Exhibit 129A. That was some six months later. It was first issued on June 1, 1949; then revised on December 12, 1949. The next revision





was under date of June 6, 1951, and that is Exhibit 130. When it was revised at that time the first two pages of instructions to the fireman were discontinued, and only the third page with regard to the inspection record remained.

This form in its three settings was used by the Canadian Pacific in Eastern Canada, but not in Western Canada. There was a divergence between the views of the mechanical officers of the company in the east and those in the west.

Those in Western Canada on the basis of information they had secured from areas in which the form had been used in the United States, and having in mind the improvements which had been effected in the construction of diesel units, reached the conclusion that the readings which had to be made to complete Form 604 were not required, and that Form 604 would be a hindrance rather than an aid in maintenance.

Woodland, Volume 25, pages  
3280-3294.

Emerson, Volume 32, pages  
4429-4433.



As time went on it became obvious to mechanical officers in eastern Canada that Form 604 was of no value and that in many cases the information obtained from it was inaccurate and led to unnecessary work in the shop trying to locate non-existent defects. As a result, it fell into disuse and was gradually withdrawn.

Fraine - Volume 19, pages 2451 -2453

O'Brien - Volume 26, pages 3528 -3531

THE CHAIRMAN: Just a minute. Form 604 -- Exhibit 130 -- Alco M.L.W. road units -- what kind of a unit was that?

MR. SINCLAIR: As can be seen from this form the checks used were all on car body types.

THE CHAIRMAN: That is all I wanted to know.

MR. SINCLAIR: It applied only to car body type units. It was not possible, of course, to check gauges and record readings on road switchers while in operation.

As the company gained experience in operating diesels in road freight service it increased its purchases of road switchers and bought fewer car body type units. In fact, as the evidence shows, no car body units have been purchased since 1954 and the company has no intention of buying any more such units. As a result, the proportion of road switchers to car bodies has gradually increased and it will increase



further in the future.

Fraine - Volume 16, page 2109

Woodland - Volume 24, page 3173 - 3176

Now the form which is at present used on diesel units to record defects is Form MP 74 which is required by the board of transport commissioners and which is on file as Exhibit 131. Prior to dieselization the Form MP 74 was kept in book form at each round house. This was revised in December, 1955, and is now carried in sheet form in the cab of the diesel.

Woodland - Volume 25, pages 3291 - 3292

Emerson - Volume 32, pages 4433 - 4435

The engineman, rather than the fireman, has the responsibility of recording defects on Form MP 74. It is -- and I am quoting from the title -- "The Engineman's Locomotive Inspection Report". Although in some cases the engineman asks the fireman to make an entry on this form for him, the purpose of the form is to give the base maintenance point a record of anything that might have occurred to the unit while it was away from the home terminal, as the engineman found it.

Woodland - Volume 25, pages 3292 - 3295

With the increasing use of diesels in road service, system instructions on the duties of firemen on diesels were developed and after consultation with the mechanical officers of the company, Mr. Emerson instructed that the bulletin of October, 1956, be issued. That is Exhibit 7





and, in particular, what I have referred to is contained on Sheet 6 and Sheet 10 of that exhibit.

Emerson - Volume 32, page 4435

That is all that needs to be looked at in this exhibit from this point of view -- Sheets 6 and 10.

Under this bulletin the only specific mechanical duties assigned to the firemen are in connection with the steam generator which is used in passenger service. The bulletin clearly states that the fireman is not required to patrol diesel units except as directed by the engineman or as may be required for the operation of steam generators. The mechanical officers of the company are satisfied that there is no need to patrol diesels while they are operating over the road.

HON. MR. MARTINEAU: What exhibit is that?

MR. SINCLAIR: Exhibit No. 7, sir. They came to that conclusion by comparing the relative reliability of car body units on which firemen did at one time make regular patrols and the road switcher units on which they could not make regular patrols. It was demonstrated to the satisfaction of the Canadian Pacific Company that car body units were not more reliable in operation as a result of patrols. The company's experience also was that the omission of the engine room readings did not in any way affect



the serviceability of the units.

Emerson - Volume 32, pages 4437 - 4438

Mr. Woodland's experience was that the patrolling of diesels had not made the slightest difference to the operation.

Woodland - Volume 25, pages 3303 - 3304

Mr. Emerson stated that patrolling has no effect on the incidence of alarms and that there is no reason for patrolling.

Emerson - Volume 32, pages 4487 - 4488

The views of all these Canadian Pacific officers are supported by the experience which the United States railroads have had in the operation of trains under the so-called "watching" rule. This rule requires that firemen on certain high-speed main line passenger trains remain in the cab of the diesel unit while the train is in motion and prevents him, therefore, from patrolling. The railways in the United States have been operating such trains without an additional person to carry out patrols and there is no indication that the units have been operating less efficiently as a result. The results of those operations show that firemen are not required to patrol.

Borntrager - Volume 6, pages 738 - 739

Loomis - Volume 28, pages 3776 - 3880

Brotherhood witness Wade admitted that if there were any need to patrol there would be just as much need to patrol units engaged in high-speed passenger service as those in use in



any other service.

Wade - Volume 49, pages 7013 - 7015

Now, Mr. Chairman and members of the Commission, the patrolling of diesel units while travelling over the road not only has no value, but it is objectionable for several reasons. For one thing, when firemen patrol they seem to be tempted to make mechanical adjustments on the units even though these are not necessary. I will deal with this matter more fully later when I review certain evidence with respect to tampering or tinkering, which is a word that has been used.

Patrolling is also objectionable because of the dangers involved. The evidence as to the extent of the danger which results from patrolling road switchers in motion is conflicting, but there can be no doubt that it is not a safe practice and that it is, at high speeds, a dangerous one. It is certainly a dangerous practice to cross over between units in motion when there is no gangway over the couplings and where you have to climb over the bar, and the evidence is that the provision of walkways between road switchers except in the case of those equipped for use in passenger service is being discontinued.

Fraine - Volume 19, pages 2448 - 2449.

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It is also a dangerous practice to open the side doors of road switcher units travelling at high speeds because of the





possibility of the doors being blown against the person inspecting the engine.

Youngs - Volume 24, page 3150

Woodland - Volume 24, page 3212

Aside from that, the opening of the side doors of road switchers is also objectionable because it allows harmful dust and dirt to enter the engine compartment.

There was some suggestion in the evidence of the Brotherhood witnesses that the practice of patrolling by firemen might have some value in that firemen would be able to detect and put out fires on diesels, thereby reducing any danger or damage which might be caused by fire. The evidence on this matter is, I submit, fairly complete and I submit that it shows that fires rarely occur on diesels that a fireman would be able to prevent; that a fireman would be unable to prevent them from occurring and that there is very little which a fireman could do to lessen the danger or damage even if he detected a fire when he was patrolling.

Some indication of the rarity of fire on diesels which cause damage may be gathered from Exhibit 164 which lists fires occurring on diesel locomotives on the Canadian Pacific from January 1, 1950, to March 13, 1957. It appears from this exhibit that apart from fires caused by crossing accidents, only 14 fires occurred



during that period of about seven years. Almost all these fires were due to electrical defects -- insulation failures, motors burning out, short circuits and so on.

Now it is extremely unlikely that a fireman making a patrol would be able to prevent such a fire from occurring. It is also very unlikely that if he were to detect such a fire while patrolling he would be able to do anything to reduce the damage caused by it.

Mr. Woodland pointed out that one of the advantages of a diesel locomotive is the fact that it uses a fuel which can be safely handled and that the fire hazard on diesels is slight. In the case of electrical failures, there may, he said, be a lot of smoke but there is no real fire. In any event the electrical equipment is enclosed in metal cabinets and there is little danger of smouldering insulation causing a fire elsewhere in the engine room.

Woodland - Volume 25, pages 3300 - 3303  
pages 3402 - 3404

Mr. O'Brien and Mr. McClean gave evidence to the same effect. Mr. McClean also stated that a person in the engine room could not prevent a crankcase explosion because he would never know when it was coming, and that he would be better out of the engine room if it did occur.

O'Brien - Volume 26, pages 3534 - 3536

McClean - Volume 26, pages 3564 - 3572



Volume 27, pages 3614 - 3630

The only witness called by the Brotherhood who gave evidence of fires on diesels of Canadian Pacific were two, Doull and Burke, although Knuff, who presented a brief at Vancouver, referred in his brief to two recent fires on Canadian Pacific diesels.

THE CHAIRMAN: You say they were Doull and -- who was the other?

MR. SINCLAIR: Burke from Toronto.

THE CHAIRMAN: And the third?

MR. SINCLAIR: Was out of the brief of Knuff.

Doull recalled an incident of a short circuit in the heater motor in a wood lined cab of a diesel which ignited the paint but apparently no real damage was done. That is, if I might explain, the heater to keep the cab warm for the people in the cab. He also mentioned an occasion when a rag which had been left in the exhaust manifold of an engine was found burning, but he doubted that the burning rag would have done any harm.

Doull - Volume 37, pages 5153 - 5157

Burke told of an accident which occurred near Alliston in the early part of 1956. He saw smoke coming out of a car body unit on a freight train on which he was fireman and called to the engineer. Burke went back into the unit but it was filled with smoke and after the train had





stopped he got underneath the unit and used the fire extinguisher. The unit was one which was being run dead-head to Chapleau for repairs and the fire had been caused by sparks from a brake-shoe igniting oil and grease on the pipe wrapping underneath the diesel floor. This fire was referred to in Exhibit 164, the last one mentioned.

Burke - Volume 54, pages 7757 - 7767

Volume 55, pages 7775 - 7778

My comment on that is this: the fire was on a car body unit, but it was not detected while Burke was patrolling. There is no reason to think that even if Burke had detected it while patrolling he could have done anything to reduce the damage. It was not until after the train was stopped that the fire was put out and that could have been done by the engineer assisted by the train crew if the engineman needed assistance and had there been no fireman.

Burke also referred to an incident in August, 1956, on train No. 964 coming through Weston on its way from MacTier. The ground relay alarm went on the second unit which was a B unit and Burke reset it. It went a second time and when he went back to reset it this time he found the unit filled with smoke. He used the fire extinguisher but the smoke continued. The train was stopped in Weston and the fire extinguisher put on again.

Apparently the smoke was caused by an



insulation failure on the dynamic grid blower motor and although Burke said this might have caused a fire in other parts of the unit it is very unlikely, in my submission, that it would have done so, and it must be remembered that the unit did operate for some distance after the fire had been discovered.

Burke - Volume 54, pages 7762-7767.

Volume 55, pages 7771-7774.

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MR. SINCLAIR: The answer is no.  
Are you looking at exhibit 164?

THE CHAIRMAN: Yes. The first  
one.

MR. SINCLAIR: Which occurred  
when?

THE CHAIRMAN: The last one you  
mentioned. The first one on the exhibit.

MR. SINCLAIR: No. That will  
not be listed on exhibit 164 because it would  
be looked upon as an insulation failure and  
not a fire. It was obviously a smoldering  
insulation breakdown. This fire was not  
detected while Burke was making a patrol and  
there is no reason for thinking, in my  
submission, that any less damage would have  
been caused had it been detected while  
patrolling. Had there been no fireman, the  
train could have been stopped and the fire  
put out by the engineman and the members of  
the train crew if necessary. This is  
volume 55, page 7788. I believe I stated  
it was not listed on exhibit 164 because  
of the fact that insulation breakdowns which  
smoulder are not considered by the company  
to be a fire.

Now, Knuff, in the brief he read,  
described two incidents about which he received  
information. One occurred on March 17, 1957,  
that would be outside the time of the





exhibit, I think.

THE CHAIRMAN: No. March 31st.

MR. SINCLAIR: It would be covered in this, sir; March 17, 1957. Here again it is a dynamic grid. The first one was March 17, 1957, expansion bridge, when a dynamic grid breakdown occurred on a road switcher, and he said the engine crew used a fire extinguisher on it. That is Knuff, volume 59, pages 8300 and pages 8304-8305.

I have also described an incident which occurred on May 24, 1957. This is where an electrical panel on a car body unit caught on fire.

THE CHAIRMAN: On what date?

MR. SINCLAIR: May 24, 1957.

THE CHAIRMAN: What did you say it was?

MR. SINCLAIR: An electrical panel inside, an electrical apparatus on a diesel which caught on fire in a car body unit. In this incident Knuff said the fire extinguisher would not operate. That is Knuff, volume 59, pages 8300 and 8305. Apparently there was some difficulty in getting into the unit.

THE CHAIRMAN: The fire extinguisher would not operate at all or was defective?

MR. SINCLAIR: It would not operate.

THE CHAIRMAN: It was out of order.

MR. SINCLAIR: Yes.



There is no suggestion in Knuff's evidence that either of these fires could have been prevented if the fireman had been patrolling or that the damage caused by either of these fires would have been greater had there been no fireman.

There is some evidence of fires on diesels on United States railways which was given by Brotherhood witnesses Barnes and Wade.

THE CHAIRMAN: In the last one would you tell us what happened in the way of damage?

MR. SINCLAIR: There was some damage. What happened was this, Knuff --

THE CHAIRMAN: Tried to operate the fire extinguisher and it wouldn't work.

MR. SINCLAIR: Yes. Then he went to the side door of the diesel and found they wouldn't open. There is a large extinguisher in the back of the diesel, a big foam extinguisher, right at the end of the unit by the big door. Apparently they did not go to that door. What happened is they stopped, saw a lot of smoke, and took the fire extinguisher in the cab and it didn't work. Then they tried the side door and they found it closed as it is supposed to be under the regulations. However, the regulations require the end door of the car



body unit always be unlocked, but apparently in the excitement I suppose of the fire they overlooked all these things. This electrical cabinet more or less, I think, kind of exploded.

THE CHAIRMAN: What was the result?

MR. SINCLAIR: There was a fire.

THE CHAIRMAN: Did the fire burn the train or what?

MR. SINCLAIR: It burned inside the car body unit. It did quite a bit of damage inside the car body unit.

THE CHAIRMAN: Was it confined to this panel, or did it get out of the panel, or what did it do?

MR. SINCLAIR: It was confined to the high voltage panel.

HON. MR. MARTINEAU: What was the date of that incident?

MR. SINCLAIR: May 24, 1957.

THE CHAIRMAN: That is where it started originally, in the high voltage panel.

MR. SINCLAIR: Yes.

THE CHAIRMAN: It didn't get outside that panel.

MR. SINCLAIR: There is a kind of a panel with a cabinet around it.

THE CHAIRMAN: What did the engine do? Could it go along?

MR. SINCLAIR: No.

THE CHAIRMAN: They had to send for help?





MR. SINCLAIR: Yes.

THE CHAIRMAN: All right.

MR. SINCLAIR: This is not in the evidence.

THE CHAIRMAN: I am only speaking about the evidence.

MR. SINCLAIR: The evidence just refers to the fire.

THE CHAIRMAN: I do not want any evidence adduced if it is not asked for.

MR. SINCLAIR: I thought you were asking.

THE CHAIRMAN: I would only ask for what is in the evidence. I am not interested in gossip or anything.

MR. SINCLAIR: I assure you it is not gossip.

THE CHAIRMAN: It is gossip as far as this hearing is concerned.

MR. SINCLAIR: All that is in this brief, and all that was said about it is in the evidence at page 8300, and perhaps I had better read this now:

" The second one we have record of was in the vicinity of Chaumox on May 24 1957.

Extra 4033 west experienced a bad fire in the lead unit. In this instance the fire extinguisher provided would not operate.



"Therefore, in spite of the efforts made by the engine crew, extensive damage was done because they were more or less helpless because of the lack of proper fire extinguishing equipment."

THE CHAIRMAN: Is that the whole story as far as the evidence is concerned?

MR. SINCLAIR: No. There is a little bit more.

Page 8305:

"Q. The other fire, where was it?

A. It was in the electrical panel, 4033, car body type.

Q. In the body?

A. Immediately behind the cab.

Q. Did you turn on the fire extinguishers?

A. I don't know.

Q. You got this information from somebody?

A. I have the information in my brief."

THE CHAIRMAN: Those are all the particulars which are given?

MR. SINCLAIR: Yes.

THE CHAIRMAN: Thank you.

MR. SINCLAIR: I am sorry I misunderstood you, Mr. Chairman.



I thought for a moment I was being cross-examined.

Some evidence was given by Barnes and Wade. Brotherhood Witness Barnes expressed the opinion that depending upon the type of fire a fireman can help to avert fires or stop them before they become serious on diesels. That is Barnes, volume 48, page 6814.

Based on information obtained from the annual reports of the Director, Bureau of Locomotive Inspection of the Interstate Commerce Commission, he referred to 12 fires which had occurred on United States railways in 1951 and subsequent years. Barnes, volume 48, pages 6816-6834. Of these, as the Chairman noted when the evidence was being given, only two occurred since 1953 and those two were in the year 1955. Barnes volume 48, page 6844.

On cross-examination Barnes admitted that two of the fires reported on for the year 1952 started in the exhaust manifold and that a certain type of Alco engine had a lot of trouble at that point which has since been corrected. Barnes, volume 48, pages 6846-6847.

Brotherhood Witness Wade gave evidence of six fires on diesels in the United States. He had first-hand knowledge





of three of these cases and obtained information about the other three from Brotherhood files.

Now, of the six cases, five were caused by flash-overs igniting oil and grease which had been permitted to accumulate on the locomotive as a result of poor house-keeping. The sixth was caused by a crank-case explosion which occurred while the train was stopped.

Wade, volume 49, pages 7037-7047 and pages 7068-7069.

Where, in Europe there is one man on the locomotive, there is no one to patrol the locomotive in motion. On one type of electric unit in Switzerland if there is a second man in the cab, which is the exception, he goes back periodically to look at its traction motors in the engine room. The Commission will recall they were on such an engine. The traction motors on this type of unit are above the floor of the unit. Traction motors on Canadian Pacific diesel units are under the unit floor, and cannot be inspected in motion. Traction motors in modern electrics and on modern diesels are under the unit floor and cannot be inspected from the engine room or in motion. Where,



in France, there are two men in the cab of diesel locomotives in road service which are not equipped with dead man control, the second man has only one duty, and that is to bring the locomotive to a stop if the engineman is incapacitated. He has no duty to patrol and has no responsibility whatsoever for the engine or any of its parts.

Again the Commission will have noted from its European observations that the diesel units of the road switcher type used in Holland, and the very latest type of diesel which was seen on the British railways at London in which the Commission rode, there was no rail at all on the walk-way alongside the engine doors.

In France there is a walk-way but in Holland and in England there is no walk-way at all -- I should say there is no railing along the walk-way; there is a walk-way but without a railing.

There is a point set out in exhibit 180-A which I feel I should call to your attention because here it is shown that in Holland, on the older types of diesel multiple unit sets used in passenger service in Holland, the engine room is part of a car which is used for other purposes, either carrying baggage, passengers or a



kitchen. Now, because of a few fires of which the engineman had no knowledge, an unskilled labourer was assigned to the engine room on these trains; his only duty was to pull a trigger which stopped the motor if he saw smoke, that is on these older type of multiple unit diesels in Holland.

THE CHAIRMAN: Is this agreed on with Mr. Lewis?

MR. SINCLAIR: Yes.

MR. LEWIS: Yes.

MR. SINCLAIR: This labourer's only duty was to pull the trigger which stopped the motor if he saw some smoke. On the newer units the motors are under the floor of each of the units, the same as on the Budd cars on the Canadian Pacific, and in that case the labourer is not required on the train.

THE CHAIRMAN: I am not sure that I have that. Was it only because of fire the labourer was carried, and did you say it was a food fire?

MR. SINCLAIR: No sir. The engineman is a<sup>way</sup> up in front of this train in a control cabinet. Two cars back and sometimes more there is the engine room which is part a car and part a coach.

THE CHAIRMAN: That is the remote control?





MR. SINCLAIR: Sometimes that coach is used partly for carrying people, carrying baggage, or on the five-unit type it is used as a kitchen for the dining car facilities that are used in the balance of the train.

Apparently the diesel motor up in that coach had a few fires in it and the engineman did not know about them. Therefore they assigned a labourer to go in and ride there with the trigger arrangement in the event that he saw smoke.

THE CHAIRMAN: That is all right.

MR. SINCLAIR: I think the exhibit goes on to say those types of units in Holland are in the process of being scrapped.

The evidence with respect to fires clearly indicates, in my submission, that fires on diesels are uncommon, that almost all of those which do occur are caused by an electrical failure of some kind which cannot be prevented by a fireman patrolling the unit, and that when a fire due to an electrical cause occurs it will not normally spread to other parts of the unit.

Certainly the evidence of the number of fires which have occurred on Canadian Pacific diesels does not, in my submission, support the view that firemen



are required on diesels because of the danger of fires.

In the rare case when a fire does occur, the train can be stopped and any assistance the engineman needs in putting out the fire can be given him by the head trainman and, if necessary, by the other two members of the train crew. The experience of the company, therefore, has been that no purpose is served in having firemen patrol diesel units while operating over the road in order to check for mechanical failures or to check for possible fires.

On the other hand, the practice of having firemen patrol in order to make such checks is objectionable for the various reasons I mentioned earlier. As a result, the company's policy has been to discourage and finally to prohibit patrolling by firemen.

In the bulletins of October 1956, exhibit 7, sheets 6 and 10, it was expressly provided that a fireman is not required to patrol because it was found, during the conciliation proceedings, that the tendency of firemen to make patrols had increased. That bulletin was intended to remove any doubt or misunderstanding.

Emerson, volume 33, pages 4568-4570 and volume 34, pages 4730-4731.



Mr. Emerson, as a result of his own observations and of reading the trip reports filed during the present proceedings indicating that firemen were continuing to patrol road switcher units when in motion, instructed a further bulletin be issued in May 1957, which is exhibit 184.

(Page 1946 follows)





That bulletin prohibits the opening of the side doors of road switchers while in motion.

Emerson, Volume 32, pages 4438-4439.

There can be no doubt whatever, in my submission, that patrolling by firemen in order to check on the operation of diesel units is not necessary and that firemen are not required on diesels in road service to make patrols.

That concludes what I have to say about the value of having a fireman to patrol diesels while travelling over the road.

I come now to the resetting of protective devices when alarms occur. This was the third reason suggested why a fireman is needed to give mechanical assistance to the engineman, that is to reset protective devices when a ground relay or other alarm occurs.

Firemen are at present being used to reset protective devices while the diesel is in motion on some types of units. The question, however, is whether a fireman is required on diesels in road freight service to do this work.

The Commission will recall that on certain types of units, road switcher



units, the engineman can reset some of the alarms from his seat.

THE CHAIRMAN: Is the point you are making that the firemen are there but they are now being used for that purpose although they are not required, and you would not keep them for that purpose? I think I follow you.

MR. SINCLAIR: One of the purposes of the very extensive trip reports made by the officers of the company was to obtain accurate evidence as to the frequency of alarms. It was done in anticipation of evidence being given by Brotherhood witnesses which might give the impression that alarms occur more frequently than in fact they do.

The evidence as to the number of alarms which occurred during the trips reported on by company officers has not been challenged by witnesses for the Brotherhood. An analysis of these trip reports was prepared and filed as Exhibit 186 by Mr. Emerson. This analysis shows that road switcher units made more miles per alarm than did car body units, indicating that road switchers, which cannot be patrolled, are not more susceptible to alarms.

1. The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations (1) under the conditions (2). It is shown that the system (1) has a solution if and only if the conditions (2) are satisfied. The proof is given in the form of a theorem.

2. In the second part of the paper, the problem of the uniqueness of the solution of the system (1) is considered. It is shown that the system (1) has a unique solution if and only if the conditions (2) are satisfied. The proof is given in the form of a theorem.

3. In the third part of the paper, the problem of the stability of the solution of the system (1) is considered. It is shown that the system (1) has a stable solution if and only if the conditions (2) are satisfied. The proof is given in the form of a theorem.

4. In the fourth part of the paper, the problem of the asymptotic stability of the solution of the system (1) is considered. It is shown that the system (1) has an asymptotically stable solution if and only if the conditions (2) are satisfied. The proof is given in the form of a theorem.

5. In the fifth part of the paper, the problem of the boundedness of the solution of the system (1) is considered. It is shown that the system (1) has a bounded solution if and only if the conditions (2) are satisfied. The proof is given in the form of a theorem.

6. In the sixth part of the paper, the problem of the periodicity of the solution of the system (1) is considered. It is shown that the system (1) has a periodic solution if and only if the conditions (2) are satisfied. The proof is given in the form of a theorem.

7. In the seventh part of the paper, the problem of the ergodicity of the solution of the system (1) is considered. It is shown that the system (1) has an ergodic solution if and only if the conditions (2) are satisfied. The proof is given in the form of a theorem.

8. In the eighth part of the paper, the problem of the mixing of the solution of the system (1) is considered. It is shown that the system (1) has a mixing solution if and only if the conditions (2) are satisfied. The proof is given in the form of a theorem.

9. In the ninth part of the paper, the problem of the entropy of the solution of the system (1) is considered. It is shown that the system (1) has a solution with finite entropy if and only if the conditions (2) are satisfied. The proof is given in the form of a theorem.

10. In the tenth part of the paper, the problem of the information of the solution of the system (1) is considered. It is shown that the system (1) has a solution with finite information if and only if the conditions (2) are satisfied. The proof is given in the form of a theorem.

It shows also that an alarm occurred on only eight of the 168 trips made. 95.2 per cent of the trips were made without alarms.

THE CHAIRMAN: Perhaps I would slow you up a little bit here. You say eight trips what?

MR. SINCLAIR: That an alarm occurred on only eight trips of the 168 trips, and that 95.2 per cent of the trips were made without alarms. Finally, it shows that the average number of miles per unit per alarm is well in excess of 3,000 miles.

The trip made by the Commission over the Canadian Pacific was approximately 3,700 miles. I have not attempted to calculate the number of unit miles, but it would of course be much greater than 3,700 miles as sometimes we had three units, sometimes more, and sometimes two units. During the whole of that trip there was no mechanical difficulty except on one occasion and that was quickly rectified.

It is clear, therefore, that an alarm on a diesel unit is a very infrequent occurrence. If there were no fireman on a diesel locomotive the engineman would have to reset the safety device in the case of an alarm, and to do this he would, of course,





have to bring his train to a stop.

In the great majority of cases where --

THE CHAIRMAN: Excuse me, is that so in every case? I thought that with some of them it could be reset by simply reaching up from the control seat?

MR. SINCLAIR: That is right. In the great majority of cases he would stop, but there are cases with road switcher units where he could reset from his seat. The point I would make is that what I think would happen would be this.

In the great majority of cases where there is more than one unit the engineman would bring his train to the next place where it was convenient for him to pull in to stop where he may be going to stop anyway with a freight train for a meet or something of that nature.

THE CHAIRMAN: When you say in the great majority of cases he would stop, you do not mean he would stop at once when the alarm would go; you mean he would stop at the first convenient place?

MR. SINCLAIR: That is right.

THE CHAIRMAN: You are more familiar with this. I just wanted to know what you had in your mind.

MR. SINCLAIR: I admit I



expressed that badly. I mean in the great majority of cases, in pretty nearly every case he would go along and stop at a convenient place. It would be a very rare time when he would stop at the time the alarm occurred to reset it. In the great majority of cases with freight trains there are two or more units and one unit would take the train to the next stop, perhaps at a lower speed, unless it was on a controlling grade.

If it were on a controlling grade he would stop because you would need your full power to maintain your motion on a controlling grade.

Whether the engineman stops at the next normal stopping place or the next station or stops immediately, it would be a short stop and would not materially affect the operation.

Fraine, Volume 13, pages 2325-2330.

Woodland, Volume 24, pages 3187-3188.

Mr. Hooley gave evidence that he had ridden between 160,000 and 165,000 miles on diesels but had never yet had a protective device apply when a freight train was on a controlling grade with tonnage.



Hooley, Volume 31, pages  
4322-4324.

Mr. Emerson pointed out that when an alarm does go on a tonnage train on a controlling grade the train will normally stall in any event before the fireman can reset the protective device, and the absence of a fireman will, therefore, have very little effect on operations. He went on to point out that any stop the engineman has to make to reset a protective device will be a short one and will frequently coincide with a stop which has to be made in any event.

Emerson, Volume 32, pages 4476-  
4477.

Mr. Koster stated that diesels on the Netherlands Railways have similar safety devices to those used on Canadian Pacific diesels. Of course in Holland, since there is no fireman, the engineman stops and resets those safety devices when there is an alarm.

Koster, Volume 5, pages 601-602.  
Volume 6, page 681.

THE CHAIRMAN: In Holland they would not have any controlling grade. Does that mean that the train would stop at once?

MR. SINCLAIR: Well, they run





more single unit diesels, as you know. If you have a single unit diesel and you get an alarm that shuts down the engine, you would stop and that is obviously what he had in mind.

THE CHAIRMAN: You said that the engineman stops; you mean the engine stops. Am I quoting you correctly? I suppose if the engine stops, the engineman would be brought to a stop also.

MR. SINCLAIR: In the light of this evidence of the infrequency of alarms and the fact that when they do occur the engineman will be able to reset them with little or no delay, is I submit evidence that the fireman is not required on diesels in road freight service in order to be available to reset protective devices.

This brings me to the last of the four suggested mechanical duties of the firemen, and that is making repairs when mechanical failures occur.

Firemen are not qualified to make repairs to diesel units and are not given either tools suitable for making repairs or spare parts. The diesel is a very different machine from a steam locomotive. It has many parts which are constructed to fine tolerances whereas



the steam locomotive is a relatively simple machine with its parts exposed. The company does not wish and does not ask engine crews on diesels to try to repair them except under the specific instructions of a mechanical officer. Even a diesel maintainer who is given special training and special tools is unable to do much to repair a diesel on the road. Generally the unit has to be brought into the shop.

Fraine, Volume 19, page 2464.

Woodland, Volume 25, pages 3305-3303.

Emerson, Volume 32, pages 4457-4459.

Not only are firemen not trained or expected to make repairs, they are discouraged from what Mr. Woodland described as "well-intentioned tampering." It has been found that damage is often done when firemen attempt to repair mechanical devices on diesels which they are not qualified to repair. As well, a fireman may suffer serious injury in attempting to make repairs. Instructions have been given absolutely prohibiting the entry of anyone into electrical cabinets while a unit is producing power.

Woodland, Volume 24, pages 3221-3224.



Mr. O'Brien in his trip reports referred to cases of firemen attempting to make mechanical adjustments without understanding what they were doing.

Exhibit 139.

THE CHAIRMAN: When you said firemen were prohibited from entering into electrical cabinets while the units are producing power, are they permitted to do so when they are not producing power?

MR. SINCLAIR: It is producing power, sir, when it is going, and when it is not going they would not be there.

THE CHAIRMAN: Then they are prohibited from entering into electrical cabins?

MR. SINCLAIR: That is right.

THE CHAIRMAN: Can you repair a diesel at any other place, that is, usefully? What is the evidence? Are they prohibited from attempting to make repairs? If not, what is the exception?

MR. SINCLAIR: No, they are discouraged from it; they are told that the company does not want them or expect them to do it, and the place where you can repair a diesel in any electrical manner -- and it is the only part you can get to -- is in the cabinet and they are told to keep out of there.

THE CHAIRMAN: All right. That is simple.





MR. SINCLAIR: Exhibit 139 refers to Mr. O'Brien's trip No. 12 in which he mentions that the fireman wanted to tighten with a wrench what he thought was a plug to the fuel pump when in fact it was an electric cable connection.

On the next trip, No. 13, the fireman wanted to tighten the fuel oil filter with an 18 inch monkey wrench because of a slight leak but was not permitted to do so because what was needed was a new gasket.

On trip No. 20 the fireman cut out one of the injectors, claiming that it was leaking badly, but in fact the leak was not unusual and did not warrant the action taken.

O'Brien - Volume 26, pages 3502 - 3505  
pages 3511 - 3513

Mr. O'Brien also referred to an incident in January 1957 on a diesel that was not making transition. In their efforts to correct the defect the engine crew got a couple of wires crossed and caused the engine to shut down. It would have been better if the engine crew had left the diesel alone, said Mr. O'Brien.

O'Brien - Volume 26, pages 3515 - 3517

Mr. O'Brien also referred to an instance of someone tampering with a low lubricating oil setting as a result of which the knob by which the adjustment is made is being sealed to prevent it being altered in future.

O'Brien - Volume 26, pages 3519 - 3520



Mr. O'Brien referred to bulletins issued at Smiths Falls forbidding engine crews to tamper with or make adjustments to protective devices or to enter electrical cabinets or interfere with or make adjustments to power contacts or interlocks without instructions.

Exhibits 140 and 141

O'Brien - Volume 26, pages 3517 - 3519

Mr. McClean on page 19 of his trip reports mentioned the case of a fireman going out on a road switcher when travelling from 47 to 50 miles an hour and thereby risking serious injury in order to change the operating temperature of the unit when in fact the gauge showed that it was in the normal operating zone and no adjustment was necessary.

McClean - Volume 26, pages 3589 - 3591

Exhibit 146

McClean also stated that there had been a lot of tampering with temperature controls and that a switch associated with the low lube oil alarm is now sealed on account of it being tampered with.

McClean - Volume 27, pages 3606 - 3608

Mr. Emerson also gave evidence that difficulties had arisen as a result of tinkering on diesels by firemen who were not qualified and who did not have the tools required for repairs.

Emerson - Volume 32, pages 4472 - 4473



He referred to two examples of tinkering. One occurred in March, 1957, on train No. 6 of the Swift Current subdivision when a fireman was sent back without proper instruction by the engineman and attempted to move the overspeed reset levers on both units, resulting in the shearing of the taper pins causing both to shut down. The train was delayed three hours and forty minutes as a result.

Emerson - Volume 33, pages 4659 - 4666

The other occurred on December 30, 1956 on a passenger train between Calgary and Edmonton when a fireman opened the electrical cabinet and tapped the equipment with a flagstaff. Mr. Emerson said the company had under consideration the possibility of sealing the electrical cabinets so that no one other than authorized maintenance staffs would be able to have access to them.

Emerson - Volume 33, pages 4666 - 4668

Evidence was given by various Brotherhood witnesses to the effect that there are various types of mechanical defects which can be dealt with -- I think they stated it -- effectively by firemen. Let us examine that evidence.

Doull and Hobbs stated that when a unit loses power because of plugged filters the fireman can change or remove the filters thereby restoring the power.

Doull - Volume 36, pages 5011 - 5012

Hobbs - Volume 51, pages 7342 - 7344





THE CHAIRMAN: I am sorry, I did not hear. I was occupied for a moment.

MR. SINCLAIR: The point I was making is that the firemen in their evidence, Doull and Hobbs, said firemen could take effective action mechanically and that one of the things mentioned by both Doull and Hobbs was that firemen could take the filters out when the fuel oil filters were blocked.

Now, if plugged filters on a diesel unit cause a train to come to a stop, the engineman can deal with the trouble as effectively as the fireman. If they do not cause the train to stop the engineman can go on to the next station and stop to change the filters then just as he might stop to reset protective devices. The delay caused by having to make a stop for such a purpose would not in any event, in my submission, be a matter of consequence. Again, plugged filters are not a common occurrence.

Evidence was given about trouble in the cooling system caused by shutters failing to operate properly and it was suggested that firemen could be of assistance in such a case.

Doull - Volume 36, pages 5015 - 5019



Now, on the facts as given by Doull it is extremely doubtful in my submission that many firemen would be able to be of assistance in such a case. Certainly, if the trouble occurred on a General Motors unit where no provision is made for operating the fans or shutters manually, an attempt to operate such fans or shutters manually would constitute tinkering which the company would not want the firemen to do.

Doull - Volume 37, pages 5234 - 5236

I must say that Doull would not agree with me that it was tinkering, but that is my conclusion from the facts.

Evidence was also given that when difficulty is experienced in making backward transition the fireman can be of assistance.

Doull - Volume 36, pages 5021 - 5024

Volume 37, pages 5237 - 5238

Hobbs - Volume 51, pages 7340 - 7341

Volume 52, page 7436



insulation failure on the dynamic grid blower motor and although Burke said this might have caused a fire in other parts of the unit it is very unlikely, in my submission, that it would have done so, and it must be remembered that the unit did operate for some distance after the fire had been discovered.

Burke - Volume 54, pages 7762 - 7767

Volume 55, pages 7771 - 7774

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Doull - Volume 37, pages 5234 - 5236

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Doull - Volume 36, pages 5021 - 5024

Volume 37, pages 5237 - 5238

Hobbs - Volume 51, pages 7340 - 7341

Volume 52, page 7436





Mr. Emerson explained how this difficulty of backward transition can be corrected by the engineman without using a fireman. The Commission will recall that all that has to be done is to return the throttle to idle, and the contacts will fall out automatically, and then advance it again.

Emerson - Volume 34, pages 4723 - 4724

Doull stated that a fireman can throw a cut-out switch in the case of a traction motor failure, but he admitted that not all Canadian Pacific units are equipped with such a switch.

However, as Mr. Doull went on to explain, if a cut-out switch is thrown a check must be made to see that the wheels are turning. In other words, before you can cut off the power it is necessary to stop. In such circumstances the engineman could operate the cut-out switch and in cases where the wheels have to be checked the inspection from the ground could be made by the head trainman. This check from the ground to see whether the wheels are turning would be done by the head trainman as a normal part of his train inspection.

Doull - Volume 36, pages 5026 - 5027

Lancaster from the Santa Fe called by the Brotherhood referred to difficulties that had been experienced on that railway with plugged injectors and said that in some cases the fireman can free them. Lancaster conceded during my



cross-examination that these difficulties may have arisen due to the introduction of a cheaper fuel being tried out on that railway. There is no suggestion that the Canadian Pacific is having difficulties with plugged injectors.

Lancaster - Volume 49, pages 6920 - 6921  
pages 6943 - 6945

Hobbs gave some evidence concerning difficulties with the reverse current relay and of firemen overcoming it by flipping the relay in the low voltage electrical cabinet. He agreed that this trouble was similar to trouble in a car when the battery is not being charged and that no immediate action is necessary.

Hobbs - Volume 51, pages 7344 - 7345  
Volume 52, pages 7443 - 7445

Mr. Emerson stated that the company does not want engine crews tinkering with the reverse current relay and that if it is not operating properly it has virtually no effect on the operation of the unit over the subdivision.

Emerson - Volume 34, pages 4727 - 4730

In two of Mr. Hooley's trip reports he noted that the fireman opened the air box drains on the road switchers. This was done after the train had stopped and, if necessary -- if it had been necessary to do so -- they could have been opened by the engineman. In fact, however, as was pointed out by Mr. Emerson, this was one of the duties which the shop staff does during trip



inspections and the company does not expect it to be done by the engine crew while the unit is moving over the road.

THE CHAIRMAN: I suppose this is all covered by your statement that all these things are not only not desired, but are prohibited by the company.

MR. SINCLAIR: Well, the company has not prohibited them in this sense -- there is no "you must not" and a lot of rules. The company has asked that these things should be left alone but in some cases this has not been effective and as a result they have had to come right out with a prohibition. The railway must operate, and we don't want to have any more laws on it than we have to have in writing and there is a natural reluctance in the operating department to put out laws. They try to keep people in line without it.

THE CHAIRMAN: You were about to give a reference for Mr. Emerson.

MR. SINCLAIR: Yes.

Exhibit 173 - pages 1, 2 and 6

Hooley, Volume 31, pages 4294 - 4297

Emerson - Volume 32, pages 4464 - 4465

The Brotherhood adduced in evidence a few specific incidents to support their suggestion that the fireman is required on diesels to give mechanical assistance. These were specific cases and I would like to review them.





First there was Colpitts in his evidence when he referred to an incident which occurred on a trip from Souris to Winnipeg on April 3, 1957, when fireman Sankow, according to Colpitts, was instructed by road foreman Grant to make repeated patrols because of trouble they were experiencing with a traction motor. Fireman Sankow, in a statement made to the company, denied that he had received instructions to patrol. He later gave evidence as to the circumstances in which that statement was made and attempted to suggest that what he said in his signed statement was incorrect.

Colpitts - Volume 43, pages 6075 - 6097

Volume 44, pages 6193 - 6199

Sankow - Volume 57, pages 8057 - 8066

Exhibit 276 (Sankow signed statement)

A. W. Grant, the road foreman referred to by Colpitts and Sankow, stated in evidence he did not give any such instructions as he was alleged to have given Sankow. He stated emphatically that there was no possibility of reversing motors or skidding wheels, the reasons given by Colpitts and Sankow to justify having a patrol made. Grant explained that the design of the units was such that the motors could not reverse, and he explained in detail why, under the circumstances, the wheels could not skid.

The Commission will recall that the traction motor which had seized in the first

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The first of these is the fact that the  
the second is the fact that the  
the third is the fact that the  
the fourth is the fact that the  
the fifth is the fact that the  
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Mr. Sinclair

instance had been mechanically separated from the wheels at Bienfait. The entire unit had been isolated and had travelled approximately 150 miles before reaching Souris. At Souris Grant cut out the one traction motor electrically so that instead of isolating the entire unit three of the motors of that unit were in a position to produce power. Mr. Grant stated if there had been any possibility of sliding wheels, or any possibility that the wheels would stick, seize or skid, he would have accompanied the unit or delegated some responsible mechanical man to have done so.

Grant - Volume 61, pages 8619 - 8644

THE CHAIRMAN: Is that the same one which took place on July 15, 1951 where it mentioned dynamic brake resistor grid?

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Now, Connor, Fireman Witness  
Connor's evidence. Connor described an incident which occurred in the fall of 1956 on a trip from Macleod to Crowsnest with heavy units. One of the three units had been cut out because of trouble with its No. 7 cylinder, but since all three units, according to Connor, were required to get over certain hills, the fireman cut in the third unit for a short time to get over those hills.

Connor -- Volume 46, pages  
6526-6529.

My comment in that regard is this: if in fact the third unit was necessary, the engineman, in my submission, could have stopped before coming to the controlling grades and cut in that unit had there been no fireman. If this was not practicable, tonnage could have been reduced to what two units could handle over the controlling grades.

Now, Connor also referred to an incident on a trip from Lethbridge to Crowsnest in April, 1957, when a single unit on an extra train quit. In that case the crew got in touch with the master mechanic and on his instructions got some oil for the governor. This





solved the trouble.

Connor - Volume 46, pages  
6529-6531.

On the facts as related by  
Conductor Connor, I fail to see what  
part the fireman played except as he was  
there he assisted the other members of the  
crew in going for the oil and coming back.  
If he had not been there, exactly the same  
procedure would have been followed as was  
in this case followed.

Now, McKinley, a qualified  
engineer, when serving as a fireman on a  
freight train from North Bend to Coquitlam  
on June 6, 1957, claims to have changed  
the filter on the trailing unit of a two-  
unit consist, thereby restoring its power.  
He was not prepared to say, however, that  
the train could not have continued to  
Coquitlam with only the one unit. If it  
could not have, the train could have  
stopped while the engineman attended to  
the trouble. I forget whether that was  
a road switcher unit he went back to or  
not. I think it was and there is some  
suggestion about that.

McKinley - Volume 59, pages  
8371-8379.

Pages 8381-8383.

Now, the Brotherhood in this



proceedings appears to attach importance to the fact that firemen are required to write mechanical examinations. That is Exhibit 147. They seek to suggest, as I understand their evidence and the cross-examination by their counsel, that the purpose of the mechanical examinations is to enable them to assume mechanical responsibilities as firemen.

Mr. Emerson explained that the examinations are taken by firemen in order to qualify them for promotion to enginemen. The company has in mind that each fireman is a potential engineman at some time in the future when he stands for promotion.

A fireman is given an opportunity to write an examination, said Mr. Emerson, so as to qualify as an engineman at a fairly early stage of his experience so that he will not find, when he has the necessary seniority, that he is unable to pass the necessary mechanical examinations to become an engineman.

Emerson - Volume 32, pages 4451-4453.

Volume 33, pages 4613-4615.

Doull - Volume 37, page 5231.

THE CHAIRMAN: To the same effect, isn't it?

MR. SINCLAIR: Yes.



Mr. Emerson gave evidence that the mechanical examinations in Exhibit 147 and Instructions Pertaining to the Movements of Trains, Engines and Cars (Exhibit 116) were in course of revision. The Mechanical Examinations had been withdrawn. He said Exhibit 116 was still in the hands of the employees although it contained information that was inconsistent with later instructions and bulletins. He said that this document, that is, Exhibit 116, could not be withdrawn because it contained instructions not dealing with diesels that were required by the employees in day-to-day operations.

Emerson - Volume 32, pages 4453-4454.

Now, the Brotherhood also appears to attach importance to the reports of defects made by the inspectors of the Board of Transport Commissioners, and apparently they seek to draw the inference from these reports that as diesels become older more troubles are encountered and this shows that there will be an increasing need for firemen to be available to deal with such defects. Extracts from the board's reports are in Exhibits 50 and 136.

THE CHAIRMAN: Exhibits what?





MR. SINCLAIR: Exhibits 50 and 136.

From the analysis which was made of the types of defects reported by the inspectors it is apparent, in my submission, that the number of these so-called "defects" bears no direct relationship to the serviceability or the safe and efficient operation of the diesel units. That analysis is Exhibit 163.

The experience of the company in fact has been directly contrary to the inference which the Brotherhood seeks to draw from these reports. When a unit first comes into service, it is likely to cause more trouble than it does later. Because of the company's system of preventative maintenance, the company's experience is that operational defects do not arise any more frequently as a diesel becomes older.

Emerson - Volume 32, pages 4488-4492.

Volume 33, pages 4671-4675.

Now, the reason for this is that before any mechanical or electrical part of the diesel reaches a stage where it is liable to cause trouble, it is replaced and a new or reconditioned piece of equipment is substituted for it.



The principle is similar to that adopted by airlines in keeping their equipment in top operating condition at all times.

Woodland - Volume 25, pages 3368-3372.

Emerson - Volume 33, pages 4676-4678.

Crump - Volume 35, page 4856.

If the principle of preventative maintenance were not sound and was not a proper method before one made a plane trip one would first ascertain the age of the aircraft. The matter is explained by Mr. Crump in a short passage which I would like to read. It is in Volume 36, pages 4941-4943:

"Q. I come next, before dealing with the proposal you made the other day, Mr. Crump, I come next to this effect of age on diesels which has been worrying me, more out of curiosity than out of its relevance to the discussion.

The Chairman: Could we stick to the relevant issues?

By Mr. Lewis:

Q. Right, sir. I will try. As I understand your position and the position of other witnesses, you



"will correct me if I am wrong, your maintenance program is such that you would replace the parts of the engine as they became uneconomic to use. Would that be about right?

A. In speaking of the maintenance of replacement of parts, we hardly refer to it as uneconomic, although there is that factor. Our preventive maintenance is designed to replace parts before they reach the point of giving any trouble. The diesel locomotive is constructed in such a manner, differently from a steam locomotive, that part replacement can be carried out in a relatively simple manner and that, as time goes on, perhaps there will not be much left of that diesel engine but the engine block, because of the wear, and moving parts are replaced on a time or mileage schedule.

Q. But this is the only point, until you replace a given part it continues to go down?

A. Inevitably.

Q. And to that extent it will require, until it is replaced, that part as it continues to go down





"will require more attention from the railway maintenance and from the engine crew, is that not right?

A. No, I do not agree with that. I think perhaps I am in the realm of engineering here, but we regard preventive maintenance as a program carried out to prevent any trouble developing. We have examples available where that type of maintenance must be carried out because you cannot have any trouble. You just simply cannot have trouble, and we have learned much from the lessons in the past few years in that regard.

Q. So your suggestion is that as the age of a part, an engine being a complex of parts, that the age of those parts in the engine, as the parts go down, would have no effect on the attention that the engine or parts required, Mr. Crump?

A. I do not think the age of those parts would have any effect. Of course, when you are dealing with any mechanical matter it is subject to perhaps failure. I have never seen any mechanical device that has



"been made or designed and manufactured to the point of perfection. But if our maintenance schedules are right, then that normal wear that takes place will be overtaken by replacement before trouble develops.

Q. That is your hope?

A. That is the basis on which we plan."

During the Commission's visit to the Ogden shops at Calgary, the members of the Commission were given some idea of how the system of preventative maintenance is carried out. Mr. Woodland stated that he had recently checked the records of the ten oldest units in the company's service which have now been used over 700,000 miles each, and had found that the incidence of failures has not increased as they became older.

Mr. Woodland also explained that certain diesels when first purchased were given maintenance inspections every 3,000 miles. The distance between inspections was later increased to 5,000 and is now 6,000 miles and the distance between major overhauls of a General Motors diesel has been increased from 240,000 to 360,000 miles.

Woodland - Volume 24, pages 3244-3245; pages 3251-3257.



Mr. Gonder with mechanical background in the Canadian National stated that the experience of Canadian National had been that defects on diesels have been definitely decreasing on a unit mile basis as the years go by.

Gonder -- Volume 30, page 4218.

Now, if I may summarize this part of mechanical assistance and what assistance a fireman can be to the engineman, if any, for the reasons I have given the evidence, in my submission, does not support the Brotherhood's position that a fireman is required to serve such purpose. On the contrary, the evidence shows that:

1. He is not required to assist the engineman in carrying out his duties of checking equipment on a diesel and that the engineman is not required to check supplies;

2. He is not required to patrol diesels while in operation either to check gauges or to check for possible fires.

3. He is not required to assist in resetting protective devices because the engineman can do this himself; and

4. Finally, the evidence shows that the company does not wish the fireman





to attempt to make repairs to diesels and has attempted to stop the fireman from making repairs to diesels on the road.

Now, there is the fourth item under this heading which is seizure or blackout.

THE CHAIRMAN: Tomorrow morning.

---At 3.55 p.m. the Commission adjourned until 10.30 a.m., Thursday, October 31, 1957.

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ROYAL COMMISSION ON EMPLOYMENT OF FIREMEN  
ON DIESEL LOCOMOTIVES IN FREIGHT AND YARD  
SERVICE ON THE CANADIAN PACIFIC RAILWAY

65

PROCEEDINGS

DATE: October 31, 1957

PLACE: Ottawa, Ont.

PAGES: 9177 - 9308

VOLUME: 65

E. L. FEATHERSTON  
SHORTHAND REPORTER  
241 MANOR AVENUE  
ROCKCLIFFE PARK  
OTTAWA, CANADA

Mr. Fraser









- 9177 -

I N D E X

October 31, 1957

A R G U M E N T

SINCLAIR, I.D.        .....        ..... 9179

EXHIBIT:

No. 198C - Canadian Pacific Railway  
proposal as to terms and  
conditions for the pur-  
pose of protecting fire-  
men now in its employ  
against the consequences  
of the loss of such  
employment        ..... 9230

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Feather  
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ROYAL COMMISSION ON EMPLOYMENT OF  
FIREMEN ON DIESEL LOCOMOTIVES IN  
FREIGHT AND YARD SERVICE ON THE  
CANADIAN PACIFIC RAILWAY

Proceedings of public  
hearing held at Ottawa,  
Ontario, Thursday,  
October 31, 1957.

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PRESENT:

Hon. R. L. Kellock,	Chairman
Hon. C. C. McLaurin,	Member
Hon. Jean Martineau,	Member
Douglas M. Fraser,	Secretary
A. R. Winship,	Asst. Secretary

APPEARANCES:

C. J. A. Hughes, Q.C.,	Representing the Commission
I. D. Sinclair,	Representing the Canadian Pacific Railway Company
David Lewis,	Representing the Brotherhood of Locomotive Firemen and Enginemen

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Thursday,  
October 31, 1957.

65th DAY

MORNING SESSION

---The Commission resumed at 10.30 a.m.

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MR. SINCLAIR: Mr. Chairman, I wish now to deal with the fourth of the purposes, as I listed them, which the firemen's union have suggested indicate that firemen are required in road freight service.

THE CHAIRMAN: I am sorry, I cannot hear you.

MR. SINCLAIR: This is the fourth purpose which I characterized as the basis of the firemen's union's contention that firemen were required on road freight diesels, and that is seizures or blackouts.

It has been suggested that the fireman is required in order that he may assist in the event of the engineman suffering a seizure or blackout when a road diesel is on the road.

The company's position is that a fireman is not required for this purpose. If a seizure or blackout occurs while an engineman is on duty but not operating the diesel the fireman serves no real purpose. It becomes necessary to have a qualified engineman take over in his place.

If the seizure or blackout occurs while the engineman is actually operating the diesel, the fireman is not required because the head trainman is





available on the diesel in road freight service to stop the train and notify the company so that another engineman can be called to take over.

The records of Canadian Pacific indicate that there have been very few cases of enginemen suffering seizures or blackouts while on duty and that less than half of these have occurred while enginemen were actually operating engines. The results of the investigation which was made of these records are set out in Exhibits 109, 109A and 109B. These are the same exhibits that are referred to in dealing with this point on yard service.

There were seven cases of enginemen suffering seizures or blackouts while operating engines during the six-year period from 1946 to 1951. Five of these were in road service and two were in yard service. I dealt with the two in yard service which were covered by Exhibit 109B.

Of the five which occurred in road service, in one case (No. 3) the engineman's blackout was temporary and when he recovered he stopped the engine himself. In three of the other four cases (Nos. 1, 2 and 7), the engineman was operating a freight train and there was a head trainman in the cab who could have stopped the



engine had the fireman not been there.

In the fifth case (No. 6) the seizure occurred while the engineman was operating a light engine moving from the shop track to the station. Had there been no fireman a member of the ground crew would have been on the engine and able to stop the engine. In any event, it was a passenger locomotive. This is the case referred to by the union witness Dixon in Volume 58, pages 8158-8160.

During the five-year period from 1952 to 1956 inclusive there were five cases of enginemen suffering seizures or blackouts while operating engines. I have excluded case No. 5 which I submit is not a bona fide case.

THE CHAIRMAN: That would be No. 5 in which exhibit?

MR. SINCLAIR: Exhibit 109. In four of these five cases (Nos. 1, 2, 4 and 6), the engineman himself brought the train to a stop before blacking out. In only one case (No. 3) did the fireman have to stop the train. In that case the head trainman was in the cab and had there been no fireman he would have stopped the train, in my submission.

If no fireman had been employed on the locomotives in the cases I have



mentioned, the safety of the company's operations would not, in my submission, have been in any way affected. This is obviously true in cases where the seizure or blackout occurred while the engineman was not on the locomotive at all or occurred while the engineman was on the locomotive but after he had brought the locomotive to a stop.

The safety of the operations would also not have been affected, in my submission, in the cases where the seizure or blackout occurred while the engineman was on a freight train because in those cases a head trainman was available to stop the engine.

It would also not be affected, in my submission, in the cases where the blackout or seizure occurred while the engineman was operating a light engine because if no fireman had been employed a member of the yard crew or train crew would have been on the engine.

Evidence was given by witnesses called by the Brotherhood of cases of enginemen suffering seizures or blackouts on locomotives in road service in the United States. Conductor Flanagan of the New York Central described two incidents he had been told about which



occurred in road service.

He said the first occurred at Ashtabula, Ohio, when Engineman Ralph became ill with what he thought was an attack of indigestion and asked his fireman Blair to take over the controls. The engineman was later taken to the hospital and when he arrived there was pronounced dead of a heart attack.

Flanagan, Volume 44, page 6262.

It does not appear from the evidence whether the engineman in fact stopped the engine before the fireman took over, but it is apparent that he could have and would have done so had there been no fireman. The point being that he had complete warning from this attack of indigestion.

The second incident in road service referred to by Flanagan occurred when Engineman Franklin suffered a heart attack while operating a road switcher at Perry, Ohio, early in 1957. He said the fireman took over. Flanagan stated that his information about this incident was very vague and he did not say whether the engineman was unable to stop the train himself. It would appear, however, that it was a freight train and there would therefore have been a head trainman





to stop the train had the engineman not been able to do so and had there been no fireman.

Flanagan, Volume 44, pages 6264-6265.

Fireman Tucker of the New York Central referred to a number of cases where a seizure or blackout occurred while the engineman was operating in road service. He secured his information from the records of the Brotherhood.

The first incident occurred on April 21, 1956, on the Utah Railway when a diabetic engineman became ill while operating a freight train. The fireman removed him from the seat and stopped the train.

Tucker, Volume 45, pages 6363-6364.

My submission is that in that case the head trainman could have stopped the train.

Tucker described another incident which occurred on July 5, 1954, on the C.B. & Q. Railway. The engineman in that case suffered a heart attack and the fireman took over the controls and stopped the train.

Tucker, Volume 45, pages 6364-6365.



This was a passenger train and Canadian Pacific does not propose that firemen will be removed from passenger locomotives.

The third incident described by Tucker took place on February 10, 1953, at Gary, Indiana. I think this shows the range of the search made by the Brotherhood. This occurred on the Elgin, Joliet and Eastern Railroad. The engineman died at the controls and the fireman took over and stopped the train on the outskirts of Chicago.

Tucker, Volume 45, page 6365.

Again this was a freight train and, in my submission, the head trainman could have stopped the train had there been no fireman.

The fourth incident from the Brotherhood files described by Tucker occurred in 1956 on the Louisville and Nashville Railway near Nashville, Tennessee. The report was that the engineman dropped dead and the fireman took over the controls and stopped the train.

Tucker, Volume 45, pages 6365-6366.

That was a passenger train.

The next one referred to by



Tucker was an incident near Oakland, California, on a freight train on September 22, 1954. According to his report the engineman by the name of Esser dropped dead and the fireman stopped the train.

Tucker, Volume 45, page 6367.

The head trainman could have stopped the train and would have done so, in my submission, had there been no fireman.

The final incident referred to by Tucker involved the same man, Esser. This occurred away back on July 20, 1930, when Esser was a fireman. In that case his engineman dropped dead and Esser stopped the train at Pinole, California.

Tucker, Volume 45, page 6367.

Tucker did not state whether that was a freight train, but my submission would be that if it had been there would have been a head trainman available to stop it under the circumstances.

Brotherhood witness Wade described an incident which occurred in May, 1951, when he was a fireman on a train which struck a car about ten miles east of Milwaukee, killing two people. Apparently the engineman went all to pieces





because of the accident and Wade operated the engine for the remainder of the trip.

Wade, Volume 49, pages 7033-7034.

In this case, of course, the locomotive had stopped before the fireman took over to bring it into the terminal.

Wade also referred to an incident about which he obtained the information from the Brotherhood's files. On reporting to work on May 7, 1957, at Chicago an engineman complained of not feeling well and the fireman, a qualified engineman, operated the train with the engineman sitting on the fireman's seat. During the course of the trip the engineman died of a heart attack.

Wade, Volume 49, pages 7034-7035.

This is a case of an engineman being on duty but not operating the engine at the time of his attack. Had there been no fireman, the only difference would have been that before starting out another engineman would have been called to operate the engine, in my submission.

I have now dealt, I believe, with all of the seizure or blackout cases in road service in the United States referred to by Brotherhood witnesses. Earlier I



dealt with the Canadian Pacific.

There was one incident on the Canadian National which was referred to by Brotherhood witness Hone and Brotherhood witness Camirand. The facts are that on May 5 or 6, 1957, passenger train No. 3, that is Canadian National train, was detoured onto Canadian Pacific track and when stopping to pick up the Canadian Pacific pilot at Current River Junction, near Port Arthur, the engineer did not stop at a double red signal.

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The fireman called to the engineer and when he did not respond Camirand applied the brakes and stopped the train. The engineman was later taken to hospital but subsequently recovered. Camirand operated the train into Port Arthur.

Hone -- Volume 52, page 7523

Volume 53, pages 7526-7528.

Camirand -- Volume 57, pages 8017-8020.

Again, this is a case of a passenger train and is, therefore, not relevant on the question, in my submission, of whether a fireman is required on diesels in road freight service to assist in the event of an engineman suffering a seizure or blackout, for the reasons I have given.

That concludes my review of the evidence as I found it in the record where enginemen suffered a seizure or blackout, and that evidence, in my submission, supports the position taken by the company that a fireman is not required on diesels in road freight service to assist in such circumstances.

If the seizure or blackout occurs while the diesel is operating over the road in freight service, the head trainman is available in the cab of the train to stop the engine and can easily do this if there is no fireman. There is an emergency brake valve in the cab and it is admitted by the Brotherhood witnesses that anyone can operate it. That was admitted by Tucker.

Tucker -- Volume 45, page 6375.

If a seizure or blackout occurs while



Mr. Sinclair

the diesel is switching enroute and the head trainman is out of the cab assisting in the switching, the diesel will be going at a slow speed with the train crew in the immediate vicinity and for the same reasons that I gave in dealing with seizures and blackouts in yard service, little, if any, danger can result from the seizure or blackout of the engineer in such circumstances.

Again I draw to the Commission's attention that it is perhaps worth noting that in the company's records -- and they were searched carefully -- there is not a single case of an engineman suffering a seizure or blackout while switching enroute during the eleven-year period from 1946 through 1956, and no such cases were referred by Brotherhood witnesses.

It may well be that if a fireman is available when the seizure or blackout occurs and he is a qualified engineman in the sense that he has passed his examinations to operate an engine, the delay to the train caused by the seizure or blackout may not be as great as it would be if there was only the head trainman available. In other words, the head trainman, of course, would not operate the engine and the conductor would have to call the dispatcher and an engineman would have to be sent out, while if the fireman was a qualified engineman he would likely take it in.

THE CHAIRMAN: What is the last reference you gave to Tucker's evidence?

MR. SINCLAIR: Volume 45, page 6375.





In view of the extreme rarity of cases where a seizure or blackout occurs while a freight train is actually operating, the delays which might result from this cause are, in my submission, of no real moment.

The Commission will recall the assessment of this matter by the French Railways. Where there was no dead man control a guard, who had no operating responsibility, rode in the cab while they were moving between stations for the sole purpose of being able to stop the train if the engineman was incapacitated. As was shown by Exhibit 180-A, where the diesel is equipped with dead man controls in France the engineman will not be accompanied by a guard but will be in the cab alone.

In Switzerland and in Holland, of course, there is the long experience of an engineman alone in the cab on trains moving between stations as well as in yards. In Switzerland, of course, there is an exception during certain night hours where there are two men.

THE CHAIRMAN: And what about dead man control?

MR. SINCLAIR: I am right up to that now, sir. The Commission will recall that Canadian Pacific diesels in road service --

THE CHAIRMAN: No, what I meant was you gave the story in connection with France and then you mentioned the Switzerland and Holland operations with an engineer alone. Do they have dead man control?



MR. SINCLAIR: Yes, both of them have dead man control. There was evidence given to the Commission that all Canadian Pacific diesels in road service, passenger or freight, on which dead man controls are not already in place are being equipped with dead man controls and when the last few have been equipped it is the intention of the company to make such controls operative in freight service. This will take place this year and is being done as an extra precautionary measure.

Fraine -- Volume 18, pages 2321-2322.

Emerson -- Volume 32, pages 4520-4522.

I wish to make it clear -- I do not think I stated that quite clearly -- that in passenger service the diesels have dead man control in operation.

THE CHAIRMAN: Now.

MR. SINCLAIR: Yes. In freight service some of the diesels are equipped with dead man control and some are not. That is Mr. Emerson's evidence. Those that are not are being fitted with them and by the end of this year dead man control will be operative on freight diesels as well as on passenger diesels.

THE CHAIRMAN: What was the reference to Mr. Emerson?

MR. SINCLAIR: Volume 32, page 4520-4522.

HON. MR. McLAURIN: January 1, 1958, will see dead man controls throughout the road service, freight or passenger.

MR. SINCLAIR: That is right, sir. This



means that on the Canadian Pacific, in addition to having a head trainman available to stop the diesel on a freight train, if no fireman is employed, the train will stop automatically when the engineman suffers a seizure or blackout. Mr. Emerson expressed the opinion that the possibility of the foot of the engineman who has suffered a seizure or blackout not coming off the dead man control pedal and the control not operating for that reason is remote.

Emerson -- Volume 31, page 4386.

That deals with the four specific purposes which I said from my reading of the evidence the Brotherhood indicated as being the principal purposes for which they contended or suggested that firemen were required in road freight service.

I said at that time that there was some evidence brought out with respect to miscellaneous assistance or purposes involving the fireman, and I think that I should review these. I am not sure from the way it was put in evidence that in the view of the person presenting it firemen were required, but it was possibly an addendum to the other four purposes, and I think I should deal with them.

The first of these is to assist train crews in emergencies. Several Brotherhood witnesses referred to the assistance firemen were able to give train crews where a breakdown of train equipment or some other unusual incident occurred on the road.

Brotherhood witness Flanagan referred







to an incident which occurred on January 8, 1957, at Collingwood, Ohio, when a freight train hit an automobile. The headend trainman assisted at the scene of the crash while the fireman went out to flag the eastbound track.

Flanagan -- Volume 44, pages 6252-6255.

Flanagan referred to another incident which occurred on May 2, 1956, on a train with 147 cars travelling from Buffalo to Cleveland. When a draw-bar was pulled on the 89th car, the headend trainman went out to flag east and the rear trainman flagged west. The fireman was used to pass signals although, because of state laws, there was a four-man train crew on the train.

Flanagan -- Volume 44, pages 6255-6258.

Flanagan did not suggest that in either of these cases the fireman was necessary or required to get the work done. He was used, in my submission, only because he was there and in the second case he may have expedited the movement and likely did.

On the Canadian Pacific there was the evidence of Sanders who gave evidence of an incident which occurred on December 26, 1956, at Griffith when his train stopped because of a broken knuckle. A portion of the train was standing on Mountain Creek bridge near Griffith on the Mountain subdivision with a car of crated machinery located at approximately the middle of the bridge, making it difficult for Sanders to pass this car to reach the car with the



broken knuckle. The head trainman went out to flag ahead and the rear trainman was flagging behind and the fireman assisted in replacing the broken knuckle and in giving signals for the brake test and in taking the siding at Griffith for passenger train No.6.

Sanders -- Volume 50, pages 7081-7100.

Sanders also filed Exhibit 245 to illustrate his evidence. The position which the company takes with respect to this incident described by Sanders is that the fireman was not required since the move can be made in the manner described in the memorandum which was filed as Exhibit 282. It is admitted by Mr. Lewis that the move can be made without the fireman as described in that exhibit. That is covered by his general admission on these various exhibits.

Sanders also referred to a second incident which occurred at Griffith earlier the same month, on December 6, 1956. The train stopped just over Mountain Creek bridge when a draw-bar was pulled on the second car behind the engine. On that occasion the chain broke when the car was being moved into the spur and Sanders stated that the fireman was very useful in helping the train crew.

Sanders -- Volume 50, pages 7100-7110.

This move, of course, could also have been made without the fireman although he did render assistance.



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At Stoney Creek -- Exhibit 246 --

Sanders also gave evidence of another incident which occurred on January 23, 1957, when his train went into emergency with the locomotive west of the westend of Stoney Creek bridge. On this occasion both the head and rear trainmen went out to flag because of expected trains and the fireman was used to assist in replacing the broken knuckle and relaying hand signals to the engineman for the brake test.

Sanders, volume 50, pages 7110 to 7117.

Exhibit 246.

The company's position is that the fireman was not required and that the move can be made in the manner indicated in the memorandum which is Exhibit 283 and to which Mr. Lewis' admission also applies.

Then there was an incident on the Shuswap subdivision -- Exhibit 247 -- to which Sanders refers in his evidence at volume 50, pages 7117-7122. He referred to an incident which occurred on February 6, 1957, 25 miles east of Kamloops on the Shuswap subdivision on a train with three units and 68 cars. The slack ran in on the train and caused the locking block to lift and uncouple four cars ahead of the caboose. The rear trainman was sent out to flag behind, the head trainman went back to assist the conductor and the fireman was used to pass





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signals to the engineman.

The company's view, our submission to the Commission, is that had there been no fireman and had the conductor found it impossible to do the work with only one trainman he could have called the dispatcher and arranged for protection so that the rear trainman could remain with the train to help the conductor.

Engineman Hobbs described an incident at mileage 4.3 on the Shuswap subdivision which falls into the category I am dealing with where a fireman assists the train crew. In that case the train broke in two and the fireman was sent out to flag ahead while the head trainman went back to see what the matter was.

Hobbs, volume 51, pages 7338-7339.

The position taken by the company, in our respectful submission, is that the fireman was not required and that the move can be made as set out in the memorandum which is Exhibit 288. This is another of the exhibits to which Mr. Lewis' admission applies.

Conductor Stacey gave evidence of an incident which occurred in June, 1956 while he was conductor on an extra freight train between Winnipeg and Brandon with 92 cars. In a move setting off two car with hot boxes at Rosser, the fireman was used to flag ahead. The same procedure was adopted when two more hot





boxes were set out at Meadows and again at Reaburn when a block of 23 cars was set out and a bad order -- the 41st car -- was set out.

MR. LEWIS: This one is C.S. cars?

MR. SINCLAIR: This one is C S. cars.

In cross-examination Stacey admitted that he could have got in touch with the dispatcher and arranged for protection instead of sending someone out to flag. In the circumstances described by Stacey, had there been no fireman and had he been satisfied that the work could not be performed by the train crew efficiently because of the necessity of having to flag ahead or behind he would have been able to arrange protection through the dispatcher and to carry out the move efficiently without the fireman.

Stacey, volume 56, pages 7956 to 7971.

Volume 57, pages 7976 to 7991.

Mr. Smith conducted a test at Reaburn and the work referred to by Conductor Stacey was carried out in this test. The Commission will recall that the time required to get protection from the dispatcher so that the trainman did not have to flag was four minutes and twelve seconds. With the conductor and one man the switching required an additional 27 minutes and 33 seconds. On the test whereby the conductor handled the work alone, giving signals direct



to the engineman, the time taken was 28 minutes and 23 seconds, that is, allowing his fireman to be out flagging.

Smith, volume 60, pages 8403 to 8406.

Pages 8408 to 8413.

Exhibit 318.

Engineman Gwynn referred in his brief to an incident which occurred on June 14, 1957 when train 976 out of Wilkie with 97 cars had a drawbar broken 75 cars back from the headend. Because of the hazy conditions the fireman went back 20 cars to relay signals and otherwise assist the train crew with the movement.

Gwynn referred to another incident which occurred on September 9, 1956 when the same train going through Perdue had a hot box two cars from the caboose on a 75-car train. Again, because of the haze, the fireman assisted the train crew by going back and relaying signals.

On cross-examination Gwynn admitted that the second move could have been made without the fireman by making smaller cuts. The same course could have been taken, in my submission, in the first of the two cases had there been no fireman.

Gwynn, volume 58, pages 8107-8108.

Pages 8119 to 8122.

The Commission will recall that Mr. Smith gave evidence in rebuttal dealing with the



question of giving signals under hazy conditions. He pointed out that the proper way to handle the situation is by using the fusees for signalling if needed for the purpose.

MR. LEWIS: Green?

MR. SINCLAIR: That was for yard. Green for yard, normal fusees being used on the road.

Smith, volume 60, pages 8478-8479.

Engineer Haukaas in his brief referred to two cases of firemen giving assistance to train crews in road freight service.

The first occurred on September 14, 1956 on train No. 81 on the Eholt hill when the fireman assisted the train crew by making cuts, applying brakes and passing signals. In this case one of the trainmen was used to flag behind.

The second matter referred to by Haukaas occurred on April 2, 1956 when a knuckle broke on train 87 on the boundary subdivision. The fireman assisted by carrying back a spare knuckle and passing signals and later when heading into Tadanac's No. 1 track, in lining a switch and passing more signals.

Engineer Haukaas did not suggest, however, that either of these moves could not be made without the fireman.

Haukaas, volume 59, pages 8287 to 8290.





In all the cases referred to in which a fireman assisted the train crew with their switching, the move could have been made, in my submission, without the fireman.

The number of times a fireman is in fact sent out to flag is very small. Mr. Fraser who had served as a trainman and conductor from 1922 to 1944 stated that in all his experience he could not recall seeing a fireman going flagging.

Fraser, volume 21, page 2703.

He also stated that it is seldom that a head trainman had to go out flagging ahead. He had been a headend trainman, as I say, for a long period -- some 20 years -- and he could count on one hand, he said, the number of times he had flagged ahead in all those years.

Fraser, volume 21, pages 2704 to 2706.

Volume 20, page 2613.

The second miscellaneous matter referred to I have characterized under the heading: "To assist the engineman to check timetables and train orders." This was the purpose, it was suggested in union evidence for which a fireman is required in freight service -- that he is required to assist the engineman to check timetables and train orders.

Conductor Sanders expressed the opinion that the fireman was required for **this** purpose and



stated -- and I am quoting him -- "It takes five men to do that because many times the whole five men have overlooked something and there has been an accident involved."

Sanders, volume 50, page 7173.

Now in some of the briefs which were filed there is also some suggestion that a fireman is necessary on diesels in road freight service in order to give enginemen assistance in checking orders and timetables.

If there were no firemen on diesels in road freight service, the engineman would still have the head trainman in the cab of the engine to assist him in checking timetables and train orders and he would still have the conductor and the rear trainman at the rear of the train to stop the train if he fails to operate it in accordance with the timetable and train orders. The engineman, therefore, even without the fireman has three men to check on his operation of the train, and, of course, they have a joint responsibility under the regulations.

The company's position is that having four men to check timetables and train orders is more than adequate and that the fifth man, the fireman, is not also required.

The next matter that is referred to in the evidence under supplementary purposes, as I call them, is where a fireman is suggested to be required in order that he may obtain ex-



perience to qualify him to become an engineman.

It is suggested that if firemen were removed from diesels in road freight service there would be no way in which new enginemen could be trained so as to be able to replace the present enginemen on diesels in road freight service.

Powell, volume 55, page 7791.

Dowdall, volume 55, page 7880.

Harris, volume 58, page 8096.

Little support is given to this suggestion by the evidence of Firemen's Brotherhood witnesses, although Engineer Doull did state that he did not think a fireman would learn much in passenger service that would be useful to him in freight service.

Doull, volume 37, page 5180.

Anticipating that this point would be raised, several company witnesses were asked to give their views as to whether enginemen could be trained for road freight service if firemen were removed from road freight diesels.

Views on this question were expressed by Mr. Crate who was for many years a fireman and engineman and is now acting superintendent of the Sudbury division, by Mr. Youngs, a road foreman of engines for the Quebec district, and by Mr. Hooley, a road foreman of engines at Vancouver.



Crate, volume 23, pages 3065-3068, Youngs, volume 24, pages 3157-3159, Hooley, volume 31, page 4321 and volume 34, pages 4785-4795.

Now all of these men, to whose evidence I have just referred, are well qualified to express an opinion on this question. Their opinion is that a fireman who has run on passenger trains and has passed the mechanical examinations and his "A" book on the operating rules and his air brake rules could be qualified to serve as an engineman in yards after two or three days. Such a man, after serving a period as an engineman in yard service could be qualified to serve as an engineman in road freight service after a number of training trips.

Each of these three witnesses gave a different estimate of the time or number of miles of experience in road freight service which would be required before such a man would be qualified. Obviously, the length of time for training would vary according to the ability of the individual fireman who was being moved up. All three witnesses, however, were satisfied that the average passenger fireman could be trained to become an engineman in road freight service even though he had no experience as a





fireman in freight service.

Now, Mr. Crump stated that the company in submitting its proposal that firemen be removed from diesels on road freight service gave consideration to the question of training enginemen if the proposal were put into effect. Based on his knowledge of what would be involved and in the light of his experience, he could see no great problem in training sufficient enginemen to handle diesels in yard and freight service if firemen were removed from diesels in those services.

Crump, volume 35, pages 8460 - 8461.

There is no basis, in my submission for believing Mr. Crump is not right in his judgment of this matter. On the contrary, we have the evidence of Mr. Bybee that enginemen are being trained for road freight service on the Quebec North Shore and Labrador Railway even though there are no firemen at all on that railway on whom to draw for enginemen. Mr. Bybee stated that a number of head trainmen had been trained as enginemen and had been able to operate satisfactorily.

Bybee, volume 27, pages 3723 - 3724.

When the Commission was in Europe



you will recall Mr. Lewis said he wished to supplement exhibit 180 which had been filed by Mr. Emerson, by developing the training given to enginemen in the countries which the Commission was visiting. It was agreed that Mr. Lewis and I would do this and a memorandum would be prepared and filed as an exhibit. This was done and exhibit 180-A was filed by me when we re-commenced proceedings last week.

Having in mind that the European railways are primarily interested in training enginemen for operations between stations when they are alone in the cab, I think their training programs are not too different from what the Canadian Pacific envisions. I should point out in Switzerland, as the Commission was informed, a yard engineman is qualified to take the diesel between contiguous stations.

THE CHAIRMAN: What do you mean by that?

MR. SINCLAIR: They have separate groups there in Switzerland.

THE CHAIRMAN: What do you mean by contiguous stations?

MR. SINCLAIR: For instance, when we were at Basel the Commission was told the yardmen there took the engine to and from Basel.



THE CHAIRMAN: Contiguous to the yard where he was working.

HON. MR. MARTINEAU: That was a small tractor?

MR. SINCLAIR: Yes, 250 horsepower as I recollect. However, as you will see from exhibit 180-A in training as an engine-man he is going to operate a larger machine. My point is even he does operate out on the main line between contiguous stations, for instance taking his engine light over to Base1 or taking the odd car down to the next station.

It must be remembered in the Canadian Pacific situation the fireman from passenger service who would be promoted to engineman already has had at least three years experience and has passed his examinations on the operating rules, air brake rules and mechanical matters which form the large part of the training outlined in exhibit 180-A.

THE CHAIRMAN: Wait until I get the sequence of that. You commenced by saying that a man who has passed his mechanical examination, "A" book and air brake examination is then qualified to serve as an engineer in a yard, and after that he would have qualified for road freight service, presumably as an engineer, after a





number of training trips?

MR. SINCLAIR: Yes.

THE CHAIRMAN: Well then where does his service as a fireman on a passenger train fit into the picture?

MR. SINCLAIR: The Commission will, of course, remember the evidence but possibly I <sup>can</sup> recall it to them, that the passenger fireman today moves up to become the engineman. The senior firemen are in passenger service and they move up to become enginemen.

These witnesses, Crate, Youngs and Hooley were considering, recommending and giving their opinion on a man who had been a passenger fireman for three years and in that three years had been on the road and in that period had passed his "B" book, his "A" book, his air brake rules and mechanical examination and had qualified in the normal way.

THE CHAIRMAN: Then the answer to my question is for the future the engineer in freight service will have passed these various examinations including his "A" book and have served as a passenger helper for three years, and then he is qualified as an engineer in a yard and after that he can be put into road freight service as an engineer after a number of training trips.



MR. SINCLAIR: Yes.

THE CHAIRMAN: That is the sequence?

MR. SINCLAIR: Yes. That is the sequence. The reason I drew that sequence to the attention of the Commission is so that they could have it in mind when looking at exhibit 180-A. There they were taking men for training who had these various time limits which had been proposed for passenger service firemen -- yard service and so on, mechanical examinations written, air brake examinations written, and operating rules written. Therefore what is envisioned in the Canadian Pacific is really that a man when he starts on the railroad could not do it in less than three or four years.

HON. MR. McLAURIN: A great many of these men graduate from yard service to road service, and what you are telling us is you are going to do in the future what you did in the past. It worked in the past and it will work in the future.

MR. SINCLAIR: It is a little different. As a freight fireman today or as a yard fireman today, or in some cases, as a passenger fireman today he would move over to the engineer's seat under the direction of the engineman and run the yard engine or passenger train. Of course,



if firemen were removed from yard service and road freight service he would not be in a position to run an engine in the yard.

HON. MR. McLAURIN: I suppose a fireman in the passenger service comes from the ranks of firemen on the yard service?

MR. SINCLAIR: Yes. They come from freight service.

HON. MR. McLAURIN: Do any firemen go directly to passenger service?

MR. SINCLAIR: It has happened. But there is the question of whether he would stay there on the seniority list. There are questions of seniority.

HON. MR. McLAURIN: The true picture today is that pretty nearly everybody who becomes a road freight engineer has had some road freight and yard service as a fireman?

MR. SINCLAIR: Yes, but he may have been, before he goes on to run a road freight engine, many years away from freight service.

HON. MR. McLAURIN: Yes, but if you get rid of firemen it would be different. A fireman gets his entire training, or initial training, on a passenger train.

THE CHAIRMAN So it is first three years as a helper on a passenger train



qualification from the standpoint of your examinations, third, engineer in a yard engine and then engineer in freight road service after the required number of training trips.

MR. SINCLAIR: That is right.

It certainly may be that that the company's methods of training enginemen might have to be reviewed when its proposal has been made fully effective. But under the proposal it could not happen until ten years from now because the men who would be moving up would not have all moved up in less than ten years under the proposal.





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In my submission, however, it is inconceivable that a training program cannot <sup>under</sup> be drawn up/which passenger firemen can be satisfactorily trained to operate as enginemen on diesels in yard service and to operate subsequently as enginemen on diesels in road freight service.

In the result, therefore, it is my submission that it is not necessary to retain firemen on diesels in yard and road freight service in order to assist in the training of enginemen.

Now, this completes my review of the evidence as to the various purposes for which firemen are required according to the Brotherhood.

Before concluding my argument on question one, I would like to refer to two further matters. I want first to say a few words concerning the company's position with respect to the briefs that were read to the Commission by members or officers of lodges, of the Brotherhood of Locomotive Engineers and of the Brotherhood of Railroad Trainmen and I propose to deal secondly with the company's policy and record for safety.

Dealing first with the briefs which were read to the Commission, the weight to be attached to the statements contained in those



briefs should, in my submission, be considered in the light of the circumstances under which they were prepared and presented to the Commission. The circumstances under which the briefs were prepared and presented are explained in part in the correspondence set out in exhibit 275, in so far as the B. of L. E. is concerned, and in the evidence of Mr. Walters, in volume 56, page 7900, in so far as the B. of R. T. is concerned.

Now, the briefs are expressed in very general terms. The reasons advanced in those briefs for requiring a fireman are much the same as the reasons given by Brotherhood witnesses and I do not think I need to deal with them at any great length or by way of close analysis. I have dealt with the facts, suggestions and general material in them as I have gone through the various points.

The principal reason advanced is, I think, that the fireman is required to keep a lookout because of the danger of cars at level crossings, and also there was some reference to trespassers in yards, and some reference to the difficulty of weather conditions under which operations are carried on and things of that kind. Some of the briefs given by the enginemen, as I said, laid more stress than the witnesses did on the need of



having firemen on diesels in road freight service in order to provide prospective enginemen with experience in this type of service and I have dealt with that point.

There was the suggestion in some of them that if the firemen were removed there would be more stress and strain on the enginemen in their work. That evidence is hardly mentioned anywhere else. My submission on that point is that in view of the number of stops which a freight train makes during the course of a run when crossing a subdivision it is not a factor which is of much consequence.

There is one other point in connection with these briefs. In considering the briefs presented by the Brotherhood of Locomotive Enginemen and the Brotherhood of Railroad Trainmen it is not inappropriate, I think, to take into account the fact that both of these unions have themselves entered into collective agreements which do not require firemen to be employed on diesels or electric locomotives in yard or road freight service.

Mr. Bybee gave evidence that the Quebec, North Shore and Labrador Railway has contracts with both the B. of L. E. and the B. of R. T. and under the terms of those contracts diesels can be operated and are being operated without firemen in road freight service. He further stated that complaints had not been





received by the company from the enginemen or trainmen about operating without firemen on their diesels.

That is Mr. Bybee's evidence, volume 27, pages 3708 to 3710, and page 3722.

There is evidence on record that the Canadian Pacific has contracts with the B. of R.T. in respect to its electric operations in the Galt, Waterloo and Port Dover area and in respect of its diesel operations on its subsidiary, the Aroostook Valley.

Under those contracts which cover all the train service employees -- that is to say the B. of R. T. represent all the train service employees under the one contract -- including trainmen, enginemen and trolley men -- they are all under the one contract -- the company is not required to employ firemen in yard and road freight service and they are not in fact employed.

THE CHAIRMAN: I do not understand how the Brotherhood of Railroad Trainmen can represent other classes of railway employees?

MR. SINCLAIR: Well, they have the contract, sir. There is nothing to stop one union representing another class of employees if it has the membership that wants



it to represent them and that is what has happened here. .

THE CHAIRMAN: Oh, it has the membership?

MR. SINCLAIR: Yes, it has the membership.

THE CHAIRMAN: Oh, I see. Then the Brotherhood of Railroad Trainmen represents who, did you say?

MR. SINCLAIR: The trainmen, enginemen and trolley men.

THE CHAIRMAN: The engineers and the trainmen?

MR. SINCLAIR: Yes, and the trolley men, too, where they are employed.

Under the contract -- the collective agreement -- the company is not required to employ firemen in yard and road freight service and the evidence is that they are in fact not employed as Emerson stated at volume 32, page 4420 and page 4425.

I wish now to deal with the second of the points I have just mentioned and that is the company's policy and record for safety. Now, the principle of safety is a cardinal principle of railways generally and of the Canadian Pacific in particular. The Uniform Code of Operating Rules (Exhibit 27) begins with the statement on page two that, "Safety is of the first



importance in the discharge of duty. Obedience to the rules is essential to safety." That was referred to by Mr. Emerson in volume 32, at page 4492.

In 1944 the Canadian Pacific set up a special safety organization for the purpose particularly of dealing with employee safety. The prime responsibility for ensuring that operations are carried on safely is, of course, in the immediate supervisory staff and the purpose of the safety bureau is to reinforce the activities of the supervisors, supervitondents, assistant superintendents, and so on. There is a central safety bureau at Montreal and regional and district safety supervisors elsewhere. There are also safety agents in some of the larger shops.

The work of this special safety organization is to train and instruct employees to recognize hazards that are inherent in their work and to eliminate these if possible and to be safety conscious.

That is to be found in Emerson's evidence, volume 32, pages 4494 to 4495.

Competitions are arranged, safety meetings are held on the job and in classes. Films dealing with safety are distributed and shown and four safety and rules instruction cars operate over the system.



Safety classes are held in these cars and safety meetings are held in the shops.

That is Emerson's evidence, volume 32, pages 4496 and 4497.

The company has issued to its employees a Code of Safety Rules dated January 1, 1949, which is filed as Exhibit 49. This code was worked out by the safety department in co-operation with the operating and mechanical forces.

THE CHAIRMAN: What exhibit did you say?

MR. SINCLAIR: Exhibit No. 49. Emerson's evidence, volume 32, pages 4497 and 4498.

In the realm of public safety, the company has been active in giving talks and in the field of general education. Talks have been given to about a quarter of a million children.

The company has received the National Safety Council Public Safety Activities Award in each of the years 1953, 1954 and 1955 and an award of merit from the National Safety Council for exceptional service in the promotion of safety during 1956.

Mr. Emerson's evidence, volume 32, pages 4501 and 4502.

The company has also introduced from





time to time various new types of equipment and improvements on equipment designed to promote safety of operations. Mr. Emerson mentioned some of these such as the adoption of Mackie Rail and the use of the Sperry Car, replacing timber bridges with steel bridges, a new switch point lock, speed signs, search-light signals, vestibule cabs, windshield wipers and defrosters, steel wheels on passenger equipment, steel running boards on the tops of cars, power-hand brakes for freight equipment, steel vans, improved lighting in terminals and a number of others.

That is Emerson's evidence, volume 32, pages 4506 to 4512.

THE CHAIRMAN: To refresh my memory, what is the situation about Workmen's compensation for injuries on railroads? Does the railroad contribute to a fund or is it liable directly?

MR. SINCLAIR: The situation, sir, with one exception which I will mention later is that it is subject to the Workmen's Compensation Act in each province and assessments are made but it is called what is known as "A self-insured" in that its experience is that it is classed under the Workmen's Compensation Act itself in some provinces -- the Canadian Pacific, I mean. Assessments are made by the board. They are paid into the Workmen's Compensation Board. The assessments are based on its own experience.



THE CHAIRMAN: One can assume then that if the assessment by reason of the experience turns out to be less it will be brought up to what is required?

MR. SINCLAIR: Oh yes.

THE CHAIRMAN: Well then, I suppose, putting it on a dollar and cents basis, that you can relate exhibit 49 to that? Merely from a financial standpoint, if you eliminate the humanitarian, the company's Code of Safety Rules and Safety Practices is motivated by its responsibility for accidents?

MR. SINCLAIR: That is so, in part.

THE CHAIRMAN: Well, I said leaving out the humanitarian.

MR. SINCLAIR: I am leaving that out, too, sir. The other part is that accidents cause delays and in addition to the cost standpoint of an accident involving personal injury there is the delay to the movement of traffic and matters associated with that.

THE CHAIRMAN: Well, bringing this down to a dollars and cents basis I thought I was including that in the dollars and cents.

MR. SINCLAIR: Yes.

THE CHAIRMAN: All right, I understand it.

MR. SINCLAIR: In order to clear this up I might mention the exception to which



I referred. In Saskatchewan some of the employees are still under what is known as the 1910 Saskatchewan Act under which they have a right of action against the company -- a common law right of action -- and under which they can sue the company for negligence if they are injured except that common employment, for instance, is denied as a defence.

THE CHAIRMAN: Well, that does not detract from the general principle.

MR. SINCLAIR: That is the only exception and that applies only to a limited number of employees in Saskatchewan.

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The results of the company's efforts to promote safety appear from the statistics which were filed in evidence.

Exhibit 113 gives the employee negligence train accident ratios for the ten largest railroads in the United States and for Canadian Pacific for the year 1955. These statistics show that Canadian Pacific had the third lowest ratio of the eleven railroads. This ratio of 1.62 is substantially lower than the average ratio of the eleven railways which was 2.56.

Fraine, volume 18, pages 2346-2349.

Emerson, volume 32, page 4493.

Exhibit 187 is a statement of employee fatality and injury ratios per million man-hours on Canadian Pacific in 1945, which is the year following the setting up of special safety bureaus, and in 1956. This exhibit shows that the ratio of fatalities per million man-hours has dropped by approximately one-third, that is, from .26 in 1945 to .17 in 1956, and that the ratio of injuries has dropped by about two-thirds, from 27.8 to 9.7. This is concrete evidence of the results being achieved by the company in promoting and emphasizing safety.

Emerson, volume 32, pages 4495-4499.

Exhibit 188 gives the number of fatalities per one thousand employees of Canadian Pacific and per one thousand employees of seven



classes of Canadian industries for the five years, 1951 through 1955. It shows that the incidence of fatalities of Canadian Pacific is in the lowest group of the seven classes of industries shown.

Emerson, volume 32, pages 4500-4501.

The measures taken by the company, Mr. Chairman and members of the Commission, to promote safety in its operations and the excellent record for safety which the company has established are important, in my submission, to a consideration of the issue before the Commission, question one.

The operating officers of the company who have been responsible for promoting these safety measures and for achieving this safety record are the officers who are also responsible for the proposal that firemen should be removed from diesels in yard and freight service.

Mr. Emerson stated that in the formulation of that proposal safety was taken into consideration and the conclusion reached was that the implementation of the company's proposal would not in any way "jeopardize the safety record which the company has and is proud of.

Emerson, volume 32, pages 4493-4494.

Mr. Crump expressed his opinion in these words:

" It is firmly my opinion, in the light of my experience, that the firemen on yard and road freight



" diesels can contribute nothing to the safe operation or to the efficiency of the operation... The removal of the firemen from freight and yard diesels, I think, might well result in the remainder of the crew becoming more alert and perhaps it even might result in an improved safety showing."

Crump, volume 35, pages 4869-4870.

I read that earlier in my submission.

By way of general conclusion to my submissions on question one, I respectfully submit that in the light of the evidence and of the viewings and observations made by the Commission, this question should be answered in the negative, that is, that the Commission's answer should be that firemen are not required on diesel locomotives in freight and yard service of the Canadian Pacific Railway and the other railways of its system mentioned in question one.

If the question is answered in the negative, as I have submitted it should be, I would respectfully ask the Commission to make it clear in their report that they are interpreting the term "freight service" as used in the question as including mixed trains, as well as trains which come under the words "freight trains".



The term "mixed train" is used in the company's time cards to refer to a freight train which may pull as well as freight cars a passenger coach, a baggage car or an express car. The crew assignment for a mixed train is the same as for a freight train. At present that means a fireman and a head trainman in the cab with the engineman, as well as a rearend crew of two.

Exhibit 25 - e.g. page 21, Special Instructions.

St. Germain, volume 38, page 5391.

Harvie, volume 51, pages 7232-7233.

Exhibit 27, page 49, Operating rule 90, second paragraph.

Question one, of course, refers to freight service and my point is that I think it should be made clear that freight service includes freight trains and mixed trains, that it covers trains which may have a baggage car and a coach as well as carrying freight cars only.

Just before I go on to question two may I say this. There are some of those who have been engaged in these lengthy proceedings who I know have had a classical training. It occurred to me that the classics might provide something that would be in point here. Accordingly I thumbed through a few things and fortunately found something which I think is very much in point.





HON. MR. McLAURIN: This is for the Chairman and Mr. Justice Martineau, I take it.

MR. SINCLAIR: I think when you hear it, sir, that we will all recognize that it summarizes the position of firemen on diesels in yard and freight service very well. This is a saying of Socrates.

"He is not only idle who does nothing, but he is idle who might be better employed."

THE CHAIRMAN: You have put it on a very high level.

HON. MR. McLAURIN: You mean the sooner we get through with this the better.

MR. SINCLAIR: I think Mr. Lewis and one of the members of the Commission challenged me at one time to express it better than I had.

THE CHAIRMAN: Well, you seem reluctant to leave the first question, but have you finished?

MR. SINCLAIR: I am finished.

THE CHAIRMAN: All right, we will go on with the second.

MR. SINCLAIR: If the Commission finds that firemen are not required on diesel locomotives in freight and yard service, then the second question directs the Commission to say what terms and conditions would be fair to the firemen, to those who use the railway, to the railway company



and to its other employees and should be observed by the railway company for the purpose of protecting firemen now in its employ against the consequences of the loss of such employment and seniority therein.

Mr. Crump has placed before the Commission the proposal of Canadian Pacific to meet these requirements of fairness and protection. There has been no criticism of this plan by the firemen's union, nor any attempt to show it does not meet the requirements. Indeed, an analysis of these requirements will show that the plan is most generous in protecting the firemen, raising questions only as to its fairness to the users of the railway and the railway company itself.

The plan, as set out in exhibit 198, provides that all firemen with seniority dates prior to April 1, 1953, will not be affected by any change in the existing diesel rule.

I have prepared copies of exhibit 198 together with copies of an amended memorandum which I prepared in the light of certain discussions that were held when exhibit 198 was introduced. I am going to submit that the amended exhibit should be taken into the record as part of my argument but I hand copies to the Commission so that they can have it now.

THE CHAIRMAN: Very well. This is 198A?

MR. SINCLAIR: I intend to put before you exhibit 198 with some underlining where I am changing



it and then 198A, if that number can be given to it.

MR. LEWIS: You had better make it 198B. I think there is a 198A.

HON. MR. McLAURINE: There is a 198B, too.

MR. SINCLAIR: Let us call it 198 as amended then.

HON. MR. McLAURIN: If you are going to keep the record straight, you should call it 198C.

MR. SINCLAIR: It is kind of an unusual thing for counsel to ask to file an exhibit. I am not asking that it be filed as an exhibit. I was going to ask to have it taken right into the record.

THE CHAIRMAN: This baffles me. I do not know the difference. Are you changing the proposition which Mr. Crump put forward?

MR. SINCLAIR: I am not changing the proposal. I am clarifying the language in the light of certain suggestions that were made.

THE CHAIRMAN: I see.

MR. LEWIS: Mr. Chairman, when I come to this point, the Commission will be given the Brotherhood's stand with regard to this question, and would it not help a great deal if we just yanked out the present exhibit 198 and put my friend's new document in? Is there any reason for being formal about it?

THE CHAIRMAN: If that is agreeable, yes.

MR. SINCLAIR: I do not think it should be yanked out because I should like to have them side by





side so we can discuss how I have changed it. I have not changed the substance of the proposal. I have changed the language in the light of certain suggestions made by you, sir, when it was introduced, as to clarifying the language so that it could be more easily understood.



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Mr. Sinclair

THE CHAIRMAN: Well, whatever it is, it is a new document. It just has to be identified.

MR. SINCLAIR: That is right.

THE CHAIRMAN: Well, you had better make it 198C, that is 198 qualified in language but not changed in substance.

MR. SINCLAIR: That is right. No. 198C is underlined where there have been changes as compared with 198.

EXHIBIT 198C -- Canadian Pacific Railway-- proposal as to terms and conditions for the purpose of protecting firemen now in its employ against the consequences of the loss of such employment.

MR. SINCLAIR: This plan, as I have said, provides that old firemen with seniority dates prior to April 1, 1953, will not be affected by any change in the existing diesel rule. Such firemen will continue to be employed on diesel locomotives in freight and yard service as well as on steam locomotives and diesel locomotives in passenger service to an extent enabling them to earn the maximum mileage at present available to them under the agreement.



These firemen will be completely protected against any loss of employment or seniority arising out of the change.

Firemen with seniority dates between April, 1953, and March 31, 1956, will be transferred to train and yard service in their own seniority territory. To the full extent that work would have been available to them as firemen had there been no change in the agreement, they will be guaranteed a reasonable minimum of earnings comparable with the minimum available to them as firemen, and they will have the opportunity, in accordance with their seniority in the new class of service, to earn more than this minimum as the applicable agreement may provide.

Their seniority rights to return to the position of fireman when firemen may be needed to fill services still requiring them are protected, that is, on passenger diesel locomotives or on the remaining steam locomotives. This means their right eventually to become enginemen, subject to the usual qualifications -- examinations, ability and so on -- will also be protected. These firemen will, therefore, be protected against the consequences of loss of employment as firemen and will lose no seniority.



On the first day of my summation, after I had read to the Commission Mr. Emerson's opinion as to the effect of removal of firemen from yard and freight diesels, you, Mr. Chairman, asked me at Volume 62, page 8786, how my contention that the presence of the fireman constitutes a distraction jibes with the company's proposal to retain firemen with certain seniority on diesels. In answer to your question I said that the company's proposal is what I would call a balancing of realities and necessities in dealing with this very unusual situation. By that I meant that the disadvantage arising from having firemen unnecessarily on yard and road freight diesels had to be balanced against the hardship which would be caused by forcing older fireman to undertake the work.

Firemen hired subsequent to April 1, 1956, will be laid off but will be given preference of employment in other branches of the company's service, subject always to the priority of firemen I have just mentioned in transferring to train and yard service. Firemen hired subsequent to April 1, 1956, entered the occupation of fireman when it was known





the company was seeking the right to remove firemen from diesel locomotives in freight and yard service. They are junior men not yet committed to a specialized skill and at a time of life when they can without disadvantage start afresh in a new field.

Even the Canadian Labour Congress when outlining to the Commission its maximum demand for the protection of workers against the effects of technological change did not claim protection for those employed for less one year.

Forsey, Volume 46, pages 6414-6420.

Mr. Lewis, in the modification of the plan which he put forward for discussion, did not suggest any change in the proposals for firemen in this latter category that I have just mentioned.

Lewis, Volume 36, page 4958.

The proposed change in the diesel rule was considered along with the change in wage rates proposed by the firemen's union. The change in wage rates was made effective as of April 1, 1956, which was the date on which the contract had become open for change. I submit this is an important point in establishing a cut-off date for determining what firemen should



be given protection.

THE CHAIRMAN: I did not follow that.

MR. SINCLAIR: The change under the diesel rule was considered along with the wage rates proposed by the firemen's union. There were demands made by the union and by the company --

THE CHAIRMAN: In 1956?

MR. SINCLAIR: Yes, and on the settlement of the wage demand it was made effective as of April 1, 1956. That is the date the contract became open for revision and I say that in my submission that is a point in establishing a cut-off date for determining which firemen should be given protection.

Certainly, in my submission, the plan of the company in so far as the protection of firemen is concerned, set out in Exhibit 198C, satisfies the requirements of Question 2 before the Commission.

In considering the fairness of the proposal to users of the railway we face a very different situation.

Mr. Gossage in his evidence outlined the basis on which the Board of Transport Commissioners established the permissive earnings of Canadian Pacific. He gave in evidence the reasons why this basis is



unsatisfactory to the company and said that it was one of the matters under consideration in the current freight rate hearings.

Gossage, Volume 2, pages 162-168.

In any case Canadian Pacific has not yet been able to achieve a net railway operating income at the permissive level established by the board as reasonable. It is clear then that any unnecessary costs imposed on the railway by increasing its inability to achieve earnings at even the inadequate level established by the board must necessitate further applications for freight rate increases to the extent that these can be made effective.

I refer to Exhibit 18 in support of that point.

The plan of the railways -- the plan outlined in Exhibit 198C -- results in an additional cost which Mr. Crump estimated would over a period of some ten years amount to a total of \$38 million as compared with a plan that would remove all firemen from diesels in yard and freight service immediately. This \$38 million would otherwise be available to increase the net operating income of





the railway and so lessen the necessity for seeking further increases in freight rates. The postponement of the reduction in cost which would be made possible by eliminating firemen constitutes, therefore, a direct burden on the users of the railway which can only be justified if it can be justified at all by the requirement of fairness in protecting the firemen from loss of employment.

Crump, Volume 35, page 4905.

Now, the modification suggested by Mr. Lewis which contemplated retaining old firemen with seniority prior to April 1, 1956, as firemen was shown to involve an additional cost amounting to \$20 million --

THE CHAIRMAN: In addition to the \$38 million?

MR. SINCLAIR: Yes, to make a total of \$58 million with that modification.

If the company were to incur this very substantial additional cost the burden of it would fall on the users of the railway in the form of increased rates and would certainly, in my submission, be extremely unfair to them. This unfairness, in my submission, would not be counterbalanced by any consideration



of fairness to the firemen involved. The firemen involved are all men with three years or less seniority and are men who are not, as firemen, serving a useful purpose and who should be placed in useful work. As I mentioned in dealing with the point of fairness to the firemen, in their new employment as yardmen or trainmen they will be given a guarantee of earnings reasonably comparable with their earnings as firemen.

Mr. Lewis' proposed modification, therefore, cannot in any degree meet the requirement of fairness to the users of the railway.

Exhibit 198B.

THE CHAIRMAN: I suggest the words "as firemen" in the third and fourth lines of subparagraph 1 of paragraph 2 of Exhibit 198C means that if any fireman in that class becomes a yardman or a trainman and a vacancy or a need for a fireman occurs, then the fireman, now the yardman or the trainman with the appropriate seniority as a fireman, would be entitled to go up, so to speak, to fireman if he wanted to. That is what is meant, is it not?

MR. SINCLAIR: He would move up



into Class 1, yes.

THE CHAIRMAN: All right. I just wondered.

HON. MR. McLAURIN: He would move up permanently?

MR. SINCLAIR: That is right.

HON. MR. McLAURIN: Provision 2 under which this operates transfers them to Class 1.

MR. SINCLAIR: That is right. Roman II, subparagraph 3, on page 2 of Exhibit 198C.

HON. MR. McLAURIN: The thing is clear enough.

THE CHAIRMAN: So there is a pool of possible firemen, so to speak?

MR. SINCLAIR: Oh, yes.

Now the users of Canadian Pacific require from it efficient service. Indeed, the obligation was laid on Canadian Pacific by its charter, and I quote it: "Forever efficiently maintain work and run the railway."

That is the statutes of Canada, 1881, 44 Victoria, Chapter 1, Clause 7, of the schedule.



In order to fulfil this obligation and to meet Canadian Pacific's users' requirements, Canadian Pacific must have adequate earnings.

Mr. Crump has given evidence of the capital expenditures that will be necessary to fulfil this obligation. He estimated Canadian Pacific will have to spend \$100 million of capital money each year for a period of years. As he pointed out, Canadian Pacific has had great difficulty in going into the money market in competition with other companies that earn a much higher return on their invested capital.

Crump, Volume 35, pages 4673-4874.

It is essential to the long-term interest of the users of the Canadian Pacific that Canadian Pacific be in a position to raise its capital requirements on favourable terms and in the amounts necessary to maintain its efficiency of operation.

In my submission it is clear that fairness to the users of the railway, without regard to other factors would demand the immediate removal of firemen from all diesels in yard and freight service.

The consideration of what would be fair to the railway company itself is in many ways similar to what applies to the users of the railway. However, because of the difficulty of raising rates and improving net income, any unfairness in the proposal advanced by the company must weigh more heavily on it than on the users of its services. The financial results of the





railway over the last eight years show that at no time has the railway received net income at the level approved by the Board of Transport Commissioners as reasonable. Indeed, the net railway income has fallen far short of such a level. The rate of return on net investment is far below what is normal in manufacturing and other industry or anything that would be a reasonable level for a utility working under regulated prices.

Gossage - Volume 2, pages 166-174 and Exhibits 17, 18, and 19.

Not only is it difficult for the railway to obtain permission to raise its rates, but it lives in a world of constant and severe competition where its ability to raise prices is becoming ever more circumscribed.

Mr. Gossage has analysed in evidence the process of competition and its effect on the earning power of the railway.

Gossage, Volume 2, pages 174-192.

In these circumstances, unnecessary costs are a particularly heavier burden on the railway. Not only do they limit its net earnings, but by raising its costs they expose it to more severe competition, thus impeding its efforts to increase its net by increasing volume. The elimination of unnecessary expense is an urgent necessity, the then official effects of which will be multiplied through the organization.

Crump, Volume 35, pages 4876-4878.



This being so, the question might be asked why the company feels justified in making so generous<sup>a</sup>/proposal to its firemen. The justification lies only in the fact that these firemen have invested a substantial portion of their lives in acquiring skills which have no value outside the railway. Men who have been firing for a substantial number of years would find transfer to a different class of service where they would be at the bottom of the seniority list a hardship. It is only after careful consideration of these factors and in a sincere desire to ensure that every consideration be given to the situation of these employees who would be laid off that the company put forward the proposal which has been presented to you.

Crump, Volume 35, pages 4879-4881.

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Fairness to the railway and its users requires at the very least that a start be made as quickly as possible in making effective the savings that can be made by not employing firemen on diesel locomotives in freight and yard service.

On the basis of the proportion of transportation work performed by diesels on the Canadian Pacific in the year 1956, the immediate elimination of firemen from diesels in yard and freight service would reduce expenses by \$5,746,000.

THE CHAIRMAN: What was that statement again?

MR. SINCLAIR: Based on the proportion of work performed by diesels on Canadian Pacific in the year 1956, the immediate elimination of firemen from diesels in yard and freight service would reduce expenses by \$5,746,000.

THE CHAIRMAN: Which is not proposed.

MR. SINCLAIR: Which is not proposed.

This annual reduction in expenses representing savings which would be made by the immediate elimination of such firemen would increase to \$11,581,000 on complete dieselization of Canadian Pacific, which is programmed for 1961.





Those figures are shown on exhibit 15.

The main interest of other employees lies in security of employment. This requires adequate net earnings so that the railway can maintain and improve its competitive standing. From this point of view, the interest of other employees is the same as the users of the railway and the railway itself.

Other employees may also compare their situation with that proposed for the firemen. The evidence is that other employees have had to bear the burden of technological change without special guarantees or protection, men being reassigned on their seniority rights or transferring to where work is available. In most of these cases the employees had skills readily marketable outside the railway so that a layoff until they were able to exercise seniority was not a serious burden. Were the skills of firemen equally marketable, other employees might complain of discrimination, but the company considered the circumstances in the case of firemen were exceptional and justified their proposal without giving grounds for other employees to claim unfairness.

THE CHAIRMAN: I suppose here you are referring to people such as boiler makers and shop workers?



MR. SINCLAIR: That is right, and maintenance of way employees.

HON. MR. McLAURIN: Everybody, even paper shufflers at head office also.

MR. SINCLAIR: Gossage dealt with this at volume 2, page 196.

Then in summary, I respectfully submit the plan put forward by the company amply meets the tests set out in the second question in so far as the firemen are concerned. If it is open to attack, it is on grounds of being less than fair to the users of the railway, to the railway company itself and to its other employees.

Now, the proposal of the company was set out in the form of a memorandum which was filed as exhibit 198

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In discussing it at volume 35, pages 4881 to 4904, the Chairman raised a number of points concerning the wording and made some suggestions to clarify the meaning. These suggestions have been considered and I have adopted some of them. I think I have adopted most of them, if I may be permitted to say so, and they have been incorporated in what is now exhibit 198C. Exhibit 198C does not, as you mentioned earlier, Mr. Chairman, change in any way the proposal that was made by Mr. Crump. All that has been done is a change in language and arrangement to make the meaning more clear. I could state what those changes are so that anyone who wishes to check them back with exhibit 198 can do so.

THE CHAIRMAN: I think your statement is sufficient.

MR. SINCLAIR: The firemen's union did not call any evidence on the second question. The only assistance given to the Commission on this question was by company witnesses and the submission of Dr. Forsey on behalf of the Canadian Labour Congress. In the light of the evidence and the submissions I have made, I respectfully submit that the second question should be answered in the terms of the company's proposal as set out in exhibit 198 which I said earlier, when this matter was first introduced, has been drafted in a form and in an attempt to use language similar to that used in the existing collective agreements.

THE CHAIRMAN: We will adjourn until 2.00 o'clock.

---The Commission adjourned at 12.30 to resume at 2.00 p.m.



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Thursday,  
October 31, 1957.

AFTERNOON SESSION

---The Commission resumed at 2.00 p.m.

MR. SINCLAIR: The third  
question before the Commission is:

"Should the provisions in  
the present agreements between the  
railway company and the Brotherhood  
concerning 'arbitraries' and the  
'mountain differential' be main-  
tained, or dropped or modified,  
and if in the opinion of the Com-  
mission they should be modified,  
how and to what extent?"

I shall deal first with  
arbitraries and then with the mountain  
differential.

Before I start I might just  
say that there are a number of exhibits  
that set out this matter in a number of  
ways. It is pretty largely a  
documentary matter, although there is  
quite a bit of evidence also. On this  
question of arbitraries there are  
Exhibits 5, 7 (pages 6 and 10), which  
superseded that part of Exhibit 116  
dealing with duties; Exhibit 114, and  
then an explanation of the various factors





in connection with road trips dealt with by Exhibit 143.

Arbitraries are payments to firemen made separate from the payment for the yard shift or road trip. They are paid on a fixed minimum time basis without regard to the fact that the firemen may be required for less time than that specified in the agreement.

There are several types of arbitraries paid to firemen. In yard service there are preparatory and final inspection arbitraries. In road service there are preparatory and final inspection arbitraries applicable to engines on shop tracks, as well as preparatory and final inspection arbitraries applicable to engines at run-through points, that is where the engine continues on with the train but the crew changes.

There are two other types of arbitraries that occur under special circumstances. One is the final inspection arbitrary applicable to firemen on work trains when they are tied up on the road. The second is the hostling arbitrary which applies when an engine is taken into or out of a shed at a point where there is not another employee assigned to this work.



Arbitraries apply to passenger, freight and yard service. They differ between steam and diesel, between shop track and run-through, between road and yard, and in so far as arbitraries applicable to steam power and to hostling of steam and diesel power are concerned, they differ between the east and the west, being higher in the west.

The preparatory and final inspection arbitrary payments that are required by the agreement are set out in Exhibit 5. That Exhibit 5 contains them all except the hostling and work train arbitraries.

The company's position is that these arbitrary payments are no longer realistic in the light of changed conditions.

HON. MR. MARTINEAU: You said except hostling?

MR. SINCLAIR: And work trains, that is when a work train is tied up on the road. When a work train comes to a terminal it would be the same as a freight and the preparatory work done would be the same as for freight. So that it is the work train final when it is tied up on the road that is not there, and the hostling.



As I say, our position is that these arbitrary payments are no longer realistic in the light of changed conditions. Developments of the steam locomotive, and even more so, the introduction of diesels, has made these allowances excessive and has brought to a head the question of making them appropriate to existing conditions.

Just to sketch in the history. Mr. Gossage has explained this. He pointed out that in their origin they did not represent payments; they were arrangements to limit the time the railway could require an employee to be on duty prior to the departure of his locomotive from the shop track and to limit what he could be required to do within the scope of his daily or mileage pay.

Mr. Druce, the vice-president of the firemen's union agreed that these early provisions were a limitation of what could be expected of the firemen. The subsequent changes in these duties are shown in Exhibit 7.

Gossage, Volume 1, pages 86-87.

Druce, Volume 55, pages 7821-7822.

Over the years changes were





negotiated so that the first preparatory work was recognized as a part of overtime payments. The first step was that they were not payments at all; the second step was that they were recognized as part of overtime payments. The next step was that preparatory work was paid for separate and apart from the road trip on an arbitrary basis of a specified period of time. The final step was recognition of final inspection time which also was paid apart from the trip and on an arbitrary basis. Since 1920 preparatory and final inspection payments have been paid on an arbitrary basis throughout Canada on the Canadian Pacific.

Gossage, Volume 1, pages 86-87.

The time employees were to be on duty to perform preparatory services on locomotives was originally specified by the company.

THE CHAIRMAN: The time what?

MR. SINCLAIR: That employees were to be on duty to perform preparatory services on the locomotive; that was specified by the company, the company fixed the time.

Just after 1900 this preparatory time was fixed at 30 minutes. As you will see from Exhibit 5, in certain instances



it is still 30 minutes. For instance, shop preparatory, steam and diesel.

As Mr. Gossage said, the purpose of putting a specified time in the agreements was so the company would be assured that the man would be there to do the work that needed to be done, and that the man would be assured he would not be there longer and have to do more duties than were agreed upon. At the first they were not paid for this, it was part of their day's work.

THE CHAIRMAN: I am not sure that I follow that.

MR. SINCLAIR: The first step was that they were not paid. When preparatory arbitraries first came in the men were not paid for them.

HON. MR. McLAURIN: Then they were not arbitraries.

MR. SINCLAIR: When preparatory work was first specified and worked out the men were not paid for it; it was all part of their day's work.

THE CHAIRMAN: And their day's work was on a mileage basis?

MR. SINCLAIR: On a mileage basis. The second step was the recognition of them in pay in overtime.

THE CHAIRMAN: Yes, all right.



MR. SINCLAIR: As I pointed out, this was first fixed at 30 minutes, and some still remain at that, but there were changes in some of them. That arbitrary period was specified in the agreements.

Gossage, Volume 1, pages 85-87.

In latter years -- this goes back for quite a few -- the duties to be performed by firemen have been changing. The practice developed of running steam passenger locomotives through terminals.

Fraine, Volume 17, page 2196.

This meant that the incoming engine crew turned the locomotive over to the outgoing crew at the change-off point; and shop maintenance forces were also present at this point to do any necessary servicing work on the locomotive so that it could leave immediately.

THE CHAIRMAN: What do you say was new about that?

MR. SINCLAIR: Instead of coming off at each terminal, the engine stayed with the train.

THE CHAIRMAN: That was because--

MR. SINCLAIR: That meant a change.

THE CHAIRMAN: That was because the locomotives became more enduring and could work over two divisions; is that what you mean?



MR. SINCLAIR: That is right. My point on this question of time or the duties of firemen was that when the locomotive came into the change-off point it was brought in with the train and had a full head of steam and the maintenance forces at the terminal were there to clean it and service it so it could leave. Therefore the fireman getting on would not have to build up his fires, build up his steam, nor would he have to do work that would be required in the case where a locomotive had been sitting on a shop track, possibly for some hours.

THE CHAIRMAN: I was just wondering if I understood you. I suppose originally the engine ran only over one division?

MR. SINCLAIR: One sub-division.

THE CHAIRMAN: And preparatory servicing was done by the crew and the final servicing was done by the crew when they put the engine to bed. When engines became powerful enough they did not have to go to bed at every subdivision, they then ran through and the practice developed where the shop staff was given the assignment you have just spoken about.

MR. SINCLAIR: That is right.





As I say, this practice of running through limits the work to be done by the fireman in preparing the engine for service or in leaving it. He does not have as much to do because it is coming in with a full head of steam, and the crew that is leaving the engine does not have as much to do because another crew is taking it over. As you put it, it is not going to go to bed.

THE CHAIRMAN: Is that of long standing?

MR. SINCLAIR: The evidence is that that was first done in the case of passenger locomotives running through about 1931. I think it was in the 1920's that it was first used and the first change made in recognition of it on passenger services was in 1931. I have a note somewhere as to the evidence given by Mr. Gossage.

THE CHAIRMAN: What do you mean by first change?

MR. SINCLAIR: On Exhibit 5 you will see reference to run-through, passenger service, steam, preparatory, 15 minutes; that is for either steam or diesel.

THE CHAIRMAN: It used to be 30 minutes?



MR. SINCLAIR: Yes.

THE CHAIRMAN: When you talk about change, you mean change in the agreement?

MR. SINCLAIR: That is right.

THE CHAIRMAN: I thought you were talking about some change in the practice of handling the situation. It is clear now.

MR. SINCLAIR: Then the oil-burning locomotive, of course, in contrast to the coal-burning locomotive, does not require any work on the fireman's part in building up the fire. The use of oil-burning locomotives, therefore, had a material effect on the amount of work required of a fireman preparatory to a trip. Equally on an oil-burning locomotive a fireman does not have to bank his fire on leaving it, as he does on a coal-burning locomotive.

The diesel locomotive requires greatly reduced time for preparatory and final work, both on the shop track and at run-through points. Its introduction into yard and road service radically changed the conditions affecting the preparatory and final inspection arbitraries.

On that other point, about



the development of the run-through practice, that will be found in Mr. Gossage's evidence in Volume 1, page 99. In the 1920's there was the first run-throughs and then the change in the agreements in 1931.

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Now in 1931 the railway was first successful in securing some modification of the arbitrary times specified in the agreement. At that time there was a reduction in the run-through arbitrary for passenger service in the east, both preparatory and final, but no change in the west. The next change was in 1949 when, with the introduction of the diesel, separate arbitraries were established for this type of power and at the same time the arbitraries on steam in the east were adjusted downward. In the west again there was no change in the steam arbitrary. Then in 1954 there were small adjustments in the arbitrary steam allowances on yard locomotives in the west, although the steam road arbitraries remained the same.

Gossage, Volume 1, pages 99-100.

The company was unable to obtain the same concessions in the western agreement as they were able to obtain in the eastern agreement. This led to the substantial differences existing between the regions for exactly the same work which I have already mentioned and which are apparent from Exhibit 5. The various factors making up the pay of a fireman in road service are set out and explained in Exhibit 143 and I do not need to go through them.

Under present conditions the arbitrary time allowances specified in the agreements no longer represent the actual time necessary to perform the duties now required of firemen. What has been achieved is only a patchwork and as

Below:

Mr. Gossage has said, and I am quoting him:

"At the present time we have a structure that has no consistency and no proper relationship to the work that is required to be performed."

Gossage, Volume 1, pages 99-100.

THE CHAIRMAN: You mean that it does not take any longer or shorter in the east or the west as a matter of fact?

MR. SINCLAIR: That is right, sir, and also there is no difference of any significance between the checks, between a run-through and a shop track on a diesel. Again, as I will argue in a moment or two, it is completely unrealistic when applied to yard engines, diesel continuous service or yard engines steam doubling. I will return to that point in a moment. All these factors are in that point as I have quoted and as it is stated by Mr. Gossage.

I will deal first with the arbitraries in yard service and I will deal later with road service.

As will be observed from Exhibit 5, the arbitrary allowances in yard service for diesel power are fifteen minutes preparatory and ten minutes final in both the east and the west. For steam power the allowances in the east are fifteen minutes preparatory and fifteen minutes final, but in the west thirty minutes preparatory is specified although the



final allowance of fifteen minutes is the same as in the east.

In yard service, as the Commission will recall, approximately two-thirds of the work in 1956 was performed by diesel locomotives -- 68 per cent. Most of these diesel locomotives in yard service work around the clock, each crew relieving the previous one. Obviously, if the locomotive reaches the change-off point on time, the maximum time each crew can be on the locomotive is eight hours. But, as a result of the arbitrariness, they each receive eight hours and 25 minutes pay. If the locomotive is late reaching the change-off point, the incoming crew will receive overtime for all time in excess of the assigned eight hours, while the outgoing crew will of necessity have to work less than eight hours but they will be paid eight hours plus the arbitrary.

THE CHAIRMAN: The allowances are the same for diesel preparatories -- in the east it is fifteen minutes and in the west it is fifteen minutes; and the final is ten minutes and in the west it is ten minutes?

MR. SINCLAIR: Steam. It is fifteen minutes in the east and thirty minutes in the west but the final is fifteen minutes in the east and fifteen minutes in the west.

THE CHAIRMAN: Yes.

MR. SINCLAIR: Shepp gave evidence on the point I have been discussing about





continuous running and the impossibility of the men being on the engines at the time they were paid for.

Shepp, Volume 4, pages 514-515.

THE CHAIRMAN: Do I understand this correctly? Let us take a crew in yard service It reports for work. It gets a preparatory, we will say, of fifteen minutes and then it is on the job, say, for eight hours, and it gets a final, we will say, of fifteen minutes.

MR. SINCLAIR: That is steam, yes.

THE CHAIRMAN: Whichever it is. It is eight hours and thirty minutes.

MR. SINCLAIR: Eight hours and thirty minutes in the east -- steam.

THE CHAIRMAN: Never mind, I am just taking one illustration. Then the next crew -- perhaps I had better do it this way. When do these shifts start?

MR. SINCLAIR: They start at various times.

THE CHAIRMAN: Well, we will say eight o'clock in the morning. The preparatory is fifteen minutes, from a quarter to eight, and the eight hours is from 8 a.m. to 4 p.m.

MR. SINCLAIR: Yes.

THE CHAIRMAN: And then the final is fifteen minutes to 4.15.

MR. SINCLAIR: Yes.

THE CHAIRMAN: And then the relieving crew comes along and they get on the job at





what time?

MR. SINCLAIR: Three forty-five.

THE CHAIRMAN: Three forty-five, and then they work from four to twelve and they get another fifteen minutes.

MR. SINCLAIR: Yes.

THE CHAIRMAN: And you say the engine is only working from eight to twelve -- that is the maximum that it can be made to work -- and how much do you say is the surplus time which is not reflected in any work?

MR. SINCLAIR: Half an hour on that.

THE CHAIRMAN: Half an hour.

MR. SINCLAIR: The point of the matter being this, that the locomotive if it is going to operate doubly with steam in two shifts of sixteen hours the men in those sixteen hours would be making sixteen hours and thirty minutes -- seventeen hours because there is fifteen minutes on each crew.

THE CHAIRMAN: You are taking another illustration.

MR. SINCLAIR: That is your illustration, sir, pulled together.

THE CHAIRMAN: All right, I see.

MR. SINCLAIR: Thirty minutes each crew, or one hour over the time the locomotive can be available.

HON. MR. McLAURIN: You are talking now about yard service?

MR. SINCLAIR: I am talking about



yard service.

HON. MR. McLAURIN: To be realistic about it, while you have a collective agreement with the union, if there is work to be done, for working eight hours, in actual practice the work which is to be done is sometimes finished in six hours or seven hours, and when there is no more work to do the men take the engine back -- they have done the day's work and they get paid for their eight hours.

MR. SINCLAIR: Oh yes, that is my next point, sir.

Yard work cannot be so organized that the starts and stops of diesels can be worked to eight hours all the time, and I have something to say about that. But the men are still paid for eight hours.

THE CHAIRMAN: Supposing you take a theoretical case where an engine can be worked for the full eight hours --

MR. SINCLAIR: That was the example you gave, sir.

THE CHAIRMAN: Under your proposition, what you want to effect is that the first crew would come to work at 7.45 --

MR. SINCLAIR: Or whenever we asked them to come.

THE CHAIRMAN: Or whenever you ask them to come, and they would start to work through till four, and then the next crew would come to work sometime before four so as to get



on the engine and work to twelve. And you would say, would you -- is this what you are coming to -- that there is no preparatory work for the second crew to do on a diesel, for instance?

MR. SINCLAIR: Or, in that case, on the steam.

THE CHAIRMAN: Or on the steam. It is there, ready, when they come to work -- all they have to do is get to the job in time to get on the engine?

MR. SINCLAIR: And check the brake.

THE CHAIRMAN: All right. I just want to follow your argument.

HON. MR. McLAURIN: He has to get a bucket of water --

MR. SINCLAIR: Oh yes, that is what I mean --

HON. MR. McLAURIN: The fellow getting off would want to drink a lot of water.

MR. SINCLAIR: Oh yes, they would book in, get a pail of water, the engineman would make certain checks -- at night he would check to see whether his headlights were on, he would check his flagging kit and so on. This is all specified and laid down.

THE CHAIRMAN: I suppose it comes to this: if you require a crew to be on time, on the job at a certain time, your proposition is that you start the break from that time whether he is walking to the engine or getting water or running the engine, until he gets off the engine





or gets to some point where he checks out?

MR. SINCLAIR: Yes, only he books in.

HON. MR. MARTINEAU: Tell me, Mr.

Sinclair, am I wrong in thinking that in yard service when the outgoing crew is earning final inspection money the incoming crew is earning preparatory allowance during the same minutes?

MR. SINCLAIR: That is right.

HON. MR. MARTINEAU: It does not often happen, though, does it?

MR. SINCLAIR: It necessarily has to happen if the engine comes in on the dot of the shift. If the engine does not come in on the dot of the shift the position becomes even worse in so far as people being paid for not working is concerned, as I will show later. Assuming, as it has been assumed here by way of illustration, that you could take diesels in yard service right on the dot for three shifts of eight hours, the point which was put is exactly what happens.

HON. MR. MARTINEAU: I do not want to be interrupting in this but doesn't yard service more or less cover this problem? It will vary as to passenger and road and so on. What do you propose, keeping it to yards?

MR. SINCLAIR: Well, the company's proposal is that we should be paying the men from the time they are required to report for duty until they book in subject to a minimum of eight hours. The reason for that is on account of the early quittance -- what is known in the



trade as "early quits" which was mentioned just now, on account of the work having been completed. In other words, that the man should get paid on a minute basis -- a basis of minutes -- from the time they report to work until the time they go off work subject to a minimum of eight hours.

HON. MR. McLAURIN: So that if a man got to work at 7.45, did his full eight hours work and there was ten minutes for a final inspection, he would get eight hours and the twenty-five minutes measured on the basis of one hour and twelve and a half --

MR. SINCLAIR: Work in yards, sir, becomes a fraction of twenty-five over eight multiplied by sixty.

HON. MR. McLAURIN: How do you measure that -- is it measured on the same basis?

MR. SINCLAIR: It is shift time in yards. With respect, sir, you took the road situation which is a conversion factor of miles and time.

HON. MR. McLAURIN: That is just for roads. How do you pay them for yards?

MR. SINCLAIR: Shift time.

HON. MR. McLAURIN: Worked out fractionally on shift time?

MR. SINCLAIR: It is a fraction, yes.

THE CHAIRMAN: So what you say is this: if you take an engine that is working 'round the clock, if there is any need for a final inspection by a shift there is no need for a preparatory inspection at the same time?



MR. SINCLAIR: Well, I would not say that. What I did say is this: that if each member of the Commission is working as a yardman in diesel No. 7000 and you, Mr. Justice Martineau, were on the first shift and you, Mr. Justice Kellock, were on the second shift and Mr. Justice McLaurin were on the third shift, between the three of you you could not work with that engine more than twenty-four hours in a day.--

THE CHAIRMAN: I know. This engine we are talking about theoretically is working twenty-four hours.

MR. SINCLAIR: That is right.

THE CHAIRMAN: You can take the conclusion or the start of anyone of those shifts you like, say eight o'clock in the morning --

MR. SINCLAIR: Yes.

THE CHAIRMAN: Well, if the final inspection work of the crew that comes off duty is done, what is the need for any preparatory inspection to be done by the crew coming on?



MR. SINCLAIR: If it is a diesel there is no final inspection work to be done. When he puts it on the shop track he puts the brake on.

THE CHAIRMAN: What about steam?

MR. SINCLAIR: If it is doubling the fireman would have to check his water.

THE CHAIRMAN: The outgoing fireman?

MR. SINCLAIR: Yes.

THE CHAIRMAN: Two firemen do not have to do that at 8 o'clock or at 12 o'clock, do they?

MR. SINCLAIR: I can see where the trouble is here. In steam engines the practice has always been to bring them into the shop track half an hour before the end of the shift in order that the servicing staff will have time to clean the pan and look after the engine. The man who comes off gets off at 7.30 and the other comes along at 8 o'clock. They do not see each other or speak to each other and the man coming on does not know how much water is there. The practice was always to make them have early quits if possible. In a case where they could not do it, the one fireman would be going down the steps as the other went up and there would be no use bothering to look at the water, but if





the boiler blew up both would be responsible because they did not check their water.

THE CHAIRMAN: The situation is clear in the case of a diesel.

MR. SINCLAIR: Yes, because there is no water to look at and nothing for the fireman to do.

THE CHAIRMAN: They do not have to be in a half hour ahead of time?

MR. SINCLAIR: No.

THE CHAIRMAN: Then, if you take the commencement hour of the 8 o'clock shift the outgoing crew goes on and if there is anything for that crew to do in the way of inspection there is nothing for the incoming crew to do in the way of inspection.

MR. SINCLAIR: That is right.

THE CHAIRMAN: And you say under the present system, assuming there is something to do, it is being paid for twice.

MR. SINCLAIR: That is right.

HON. MR. McLAURIN: But in actual practice as company and management and being employer, you are not complaining about the two shifts working seven hours although you are paying them on an eight hour basis. That is not a quarrel with anyone, that is the reasonable proper pay for a fireman to get even if works six hours. From a practical point of view if you get rid of these arbitraries



you would not be paying arbitraries because you are not exhausting your eight hour shifts.

MR. SINCLAIR: In some of them it is so and in others it is not. I think we are losing the point, not on the early quit, but on the point raised by the chairman, any time spent on the engine would actually, on a continuous 24-hour three shift basis, have to be done in the eight hour period for which they were already paid.

Mr. LEWIS: I do not want to interrupt, but I think we are trying to get at the facts. I do not want, in not saying anything, to mean I agree with my learned friend that there is a practice for steam engines to be taken in half an hour early for the purpose of the service staff doing something to it.

MR. SINCLAIR: You will have your opportunity when the time comes.

THE CHAIRMAN: Mr. Lewis was only clearing this up as we went along. I must say I personally, from the discussion, pretty well follow the diesel situation but you seem to indicate it would not, perhaps, normally be the same in steam.

MR. SINCLAIR: I say it is worse in steam. I think there is evidence on this and I will have to look it up. I think there



was a statement made that yardmasters try to bring in their steam engines a half hour before the end of the shift for that purpose.

THE CHAIRMAN: Assume it is so.

MR. SINCLAIR: If that is so every fireman on that trip is getting paid eight hours when the engine is only out for seven and a half hours and the portion of an eight hour shift a steam engine would work would be less on the average than the proportion of time a diesel engine would work on the average. That is offset to this extent, that a steam engine requires more work to be done by the fireman which takes him longer to do if it is hand-fired. If it is oil-fired, and there is evidence about this, when he brings it in all he does is crack the valve.

THE CHAIRMAN: Then under what you propose in the eight hourshift you are going to pay the men some additional time at the beginning and at the end of that shift, dependent upon the time you want them in the first instance to report before they go on duty, and the time after the conclusion of the shift when they book in. You would still be paying them eight hours plus.

MR. SINCLAIR: Yes.





THE CHAIRMAN: It simply comes back to this, you are paying them eight hours plus now and you are saying the plus is too much in view of the disappearance or diminution of what is required over the eight hours and there may be nothing required over the eight hours if the actual work doesn't last the whole shift.

MR. SINCLAIR: That is right.

HON. MR. MARTINEAU: But you say in many instances there would be no loss particularly in yard ~~diesel~~. They would be paid just the eight hours and no more.

THE CHAIRMAN: No. They would all get more than eight hours under your proposal.

MR. SINCLAIR: They would get more than eight hours because they would be called before the shift commenced.

THE CHAIRMAN: And you would have to give them some time after the shift ceases to book them in.

MR. SINCLAIR: That might be included in the time of the shift on an early quit.

THE CHAIRMAN: On an early quit, yes, of course.

HON. MR. MARTINEAU: That is what I meant when I said sometimes you wouldn't pay more.

THE CHAIRMAN: Sometimes, yes.



MR. SINCLAIR: What I said, sir, in answer to my lord Mr. Justice Kellock is there is 24 hours in the day so each would get eight hours and so far as the time in booking in or out is concerned they would always be within the eight hours and we want to do that because of certain things we have to do with the yard crew. In so far as the eight plus is concerned that would only apply if the yard men worked to the end of the shift.

THE CHAIRMAN: I thought you were saying it applied in every case.

HON. MR. McLAURIN: Suppose you have an assigned shift and a man comes on, for instance, at eight o'clock. You start him at eight o'clock, you do not ask him to come until 8 o'clock, you start paying him at 8 o'clock and he gets through in  $7\frac{1}{2}$  hours and you are clear of your obligation to him for eight hours pay.

MR. SINCLAIR: Yes.

HON. MR. McLAURIN: If you got into a tight spot in the yard and there was not another shift available -- for instance when the Royal Commission has been around mixing up the cars -- then instead of seven hours that fellow gets eight hours plus <sup>or</sup> nine. You might call it an arbitrary, but he is getting paid for it.

MR. SINCLAIR: It would be on a



minute basis.

HON. MR. McLAURIN: He is getting paid for it anyway.

MR. SINCLAIR: Yes. He certainly is. What might happen is we would call the man for eight o'clock, he would book out, check his watch, read his bulletins and do whatever is required, move out to the engine, get up on the engine, do whatever the company instructed him to do in respect to checks on the engine, and then the engine would leave the shop tracks. Then, if it came in at 3.30 in the afternoon he would set the brake if that is what was required. Then he would walk over to the booking-in place and book out and if he arrived there at 3.35 he would get paid until 4 o'clock.

THE CHAIRMAN: As far as that is concerned I suppose the company could tell him to wait until 4 o'clock until the incoming man arrived and tell him everything is all right.

MR. SINCLAIR: I suppose you could do that today.

THE CHAIRMAN: We are speaking about realistic things I know, but as far as being paid for eight hours is concerned the company could take that position.

MR. SINCLAIR: Today under the



arbitrariness we could say to the man as he came in off the engine, you were here at 3.30 and you stay here until 4.15 because you are going to be paid until 4.15.

THE CHAIRMAN: Are you saying something like this, that at 8 o'clock in the morning, on the 8 o'clock shift, instead of the previous shift ending at 8 o'clock it would end at 7.50 and you would get rid of one crew and ten minutes would be plenty of time to get the new crew on the job. Are you saying something like that?

MR. SINCLAIR: No. What I am saying, sir, is this: even if the crew which I am going to relieve does not get there until 8 o'clock I can get booked in, walk over to my engine in the change-off point, do whatever is necessary, and still be waiting for my yard crew who do not<sup>have to</sup> come on to work until 8 o'clock and who have things to do before we move off, and so I wouldn't have to bring the engine in before time to get it away as quickly as I can after the commencement of the 8 o'clock shift.

THE CHAIRMAN: I see. If you bring the yard crew into it, you are saying you can have your whole three eight-hour shifts and get rid of your outgoing crew and have the new crew arrive at 8 o'clock and not before.

MR. SINCLAIR: Yes.





THE CHAIRMAN: And any time it takes them to book in and get on the engine after 8 o'clock would be taken up anyway in waiting for the yard crew to get into position.

MR. SINCLAIR: Yes sir.

HON. MR. McLAURIN: In many yards it would mean a financial saving to the company and get rid of some payments.

MR. SINCLAIR: Yes.

HON. MR. McLAURIN: And yet you would be paying for the actual time worked.

MR. SINCLAIR: Every minute of it.

HON. MR. McLAURIN: And you would get rid of the bookkeeping, I suppose, entailed in calculating arbitraries?

MR. SINCLAIR: Well, we would get rid of some of it. I would like to agree with you -- we would certainly simplify things a great deal by going on a minute basis.

THE CHAIRMAN: In the illustration I gave to you, if the engine did not in fact come in until 8 o'clock then you would have to pay the outgoing crew something beyond eight hours.

MR. SINCLAIR: Yes.

THE CHAIRMAN: But not the incoming crew. They would come in at 8 o'clock and start getting paid at 8 o'clock. But you say you do not worry about any time lost there by them because



the engine crew wouldn't be ready until the yard crew was ready.

MR. SINCLAIR: Yes.

THE CHAIRMAN: If the engine in the eight hours doesn't work the whole eight hours then the outgoing crew gets paid for everything they do in their eight hours and a new crew starts at 8 o'clock and starts to get paid at eight o'clock and any time it takes them to get ready and to get the engine at the point where it starts to work would be occupied by the yard crew getting in position to go to work.

MR. SINCLAIR: Yes.

HON. MR. McLAURIN: What proportion of the early quits are there in a typical yard?

MR. SINCLAIR: I have that.

HON. MR. McLAURIN: Perhaps you are coming to it.

MR. SINCLAIR: These arbitraries are very complicated if you do not keep them in categories. I have it analyzed. There are something like 100 odd observations in the record which I have analyzed here.

HON. MR. McLAURIN: There are a lot.

MR. SINCLAIR: Yes, there are a lot of them.



I think, picking it up from memory, if you want an answer -- I am not attempting to run away from a question -- I believe Shepp said there were 745 to 755 on the average on steam engines and it would be less for diesels. That is a general average.

THE CHAIRMAN: Is it the case, on the evidence, that at the conclusion of any shift, which is of course the commencement of the next shift, that a yard engine, whether steam or diesel, must go to the shop track. For instance, in West Toronto could it be left right in front of the yard office and the one crew get off and another on?

MR. SINCLAIR: There are change-off places established all through the yard.

THE CHAIRMAN: I thought you said they had to go to the shop track.

MR. SINCLAIR: That is my fault. We generally speak about changing off on the shop track. Steam engines, unless there is a herder, have to go to the shop track.

THE CHAIRMAN: What is a herder?

MR. SINCLAIR: One engine which comes and puts water and coal on one engine from the other.

HON. MR. McLAURIN: We have the yard crew pretty well cleared up I believe.

MR. SINCLAIR: I think so, my lord. If I am not making it clear, it is my own fault.





It is not difficult if you take it step by step, but if you try to cut across it and do not keep on steam or on diesels you can get into a question of what is "yes" for this is "no" for that. I do not want to mislead anyone.

THE CHAIRMAN: There might have been some short cuts which could have been taken before but perhaps not here.

MR. SINCLAIR: As I have said here, the nature of yard work is such it is often difficult to assign work which will allow the engine to return to the change-off point whether it be somewhere in the yard or on the shop track at the exact time the shift ends.



Sometimes engines have to come quite a distance from the yards to the change-over point and it is difficult to judge exactly how long this will take in view of conflicting movements, as the Commission may well recognize.

Some switching jobs take quite a while to complete, and to avoid confusion a crew is not normally started on a job that it cannot complete. These are obvious points.

In order to keep away from overtime on the job the usual practice is to have yard engines arrive at the change-over point a little ahead of the shift, as close to the shift as you can get it, a little ahead of it. On some days and on some assignments this time of arrival at the change-over point ahead of the shift can be substantial because of normal variations in work, and this applies particularly to industrial work.

For example, Mr. Shepp at Volume 4, page 532, referred to a case where a yard engine reported at the change-over point an hour and a quarter prior to the end of the eight-hour shift.

There are in evidence



38 specific observations by company officers where the arrival time of the engine at the change-over point is noted. In 28 of those, that is 28 out of the 38, the engine arrived at the change-over point more than five minutes ahead of the end of the eight-hour shift, and the average time in advance of the end of the shift in those 28 cases was 37 minutes. The time ranged from 13 minutes to two hours, that is the arrival at the change-over point ahead of the end of the shift.

Those 38 specific observations and the analysis that I have made of them can be developed by looking at the details in Exhibits 37, 56, 63, 70, 71 and 82.

THE CHAIRMAN: It would seem obvious that if eight hours is not occupied in work that overtime beyond eight hours, whether you call it an arbitrary or whatever you call it, should not be paid for. I suppose that is your first contention?

MR. SINCLAIR: That is it.

THE CHAIRMAN: We will hear from Mr. Lewis about that. To make it more difficult, I suppose if it should not be paid for once it should not be paid for twice, that is to the coming-off



crew and the going-on crew?

MR. SINCLAIR: That is right.

THE CHAIRMAN: It is hard to see that.

MR. SINCLAIR: The evidence is that the work required of a yard fireman prior to coming on shift, well, he may get a pail of water and probably sweep out the cab, but even that could well be done, as I have said in our proposal, without any disability. Mr. Shepp mentioned that he observed recently a fireman opening the doors on some of the diesels and looking inside of them. He said he had never noticed this before to any great extent. He believed that they were looking at the governor.

Mr. Woodland stated in his evidence that in his opinion there were no duties required of a fireman for preparatory inspection on diesel locomotives. I am talking now of yard. Mr. Shepp pointed out that a maintainer was present at the change-off point and that he makes any adjustments that are necessary on the engine.

Shepp, Volume 4, pages 512-519.

Woodland, Volume 25, pages 3312-3313.

THE CHAIRMAN: Just so that these things will be fully discussed, it





would seem, for instance, that if the company says, "Now, we do not want certain things done" -- I am talking about yard engines -- "we do not want certain things done, for whatever reason it may be, they are not necessary." If that should result in damage or something of the kind, or if it is something that delays the train because it should have been done, the company would have to suffer. The remedy is not that it should be done because the firemen think it should be done. That is the way you would put that, I suppose?

MR. SINCLAIR: That is right; that certainly is right.

THE CHAIRMAN: So I do not think you need to talk about this opening of doors and all these details. We will hear what Mr. Lewis has to say about these things. Then you will have an opportunity to answer him.

MR. SINCLAIR: I want to point out in fairness that Mr. Post gave evidence on preparatory duties of the fireman. He was really the only one who did and he admitted that the duties were less than on a road engine. He claimed he had checks to make and other duties that would take him the full 15 minutes.



Post, Volume 38, pages 5354-5355.

Many of the checks made by Mr. Post are unnecessary, and he listed them. A fireman is not required by the instructions set out in Exhibit 7 (sheets 6 and 10) to do anything about checks such as he is talking about, except to assist the engineman. The engineman is not required under the instructions contained in Exhibit 114 (sheets 1 and 4) to check such things as supplies, governor oil, cooling system and oil filters.

THE CHAIRMAN: That is just the sort of thing I had in mind a minute ago.

MR. SINCLAIR: That is right. I thought that in fairness I ought to put that on the record because that is the evidence on that point.

THE CHAIRMAN: If experience should show that the company is wrong in saying that they do not want these things done, if an engine should break down or lose time or something like that, then the company would soon have to say, "We want them done," and they would have to pay for the time.

MR. SINCLAIR: That is correct. We want to pay for anything under this proposal that we require the men to do, on a minute basis. We want to pay for



every minute we require the men to work.

THE CHAIRMAN: I think we understand your point.

MR. SINCLAIR: I think I have made the point that a yard crew must work as a team, that is the ground crew and the people on the engine. The ground crew, that is the yardmen and the yard foreman do not receive any preparatory time. If they are going to work on the 8 o'clock shift, they come to work at 8 o'clock and are ready to go to work. They have to get their switching list and they have to decide how they are going to get their work done.

THE CHAIRMAN: You mean they book in at 8 o'clock?

MR. SINCLAIR: At 8 o'clock.

THE CHAIRMAN: After that they have to get ready to get to the point where the movement starts?

MR. SINCLAIR: They would also have to get from the yardmaster their switching list.

THE CHAIRMAN: They would have to do whatever they have to do.

MR. SINCLAIR: They would go to work with the first move, that is right, but that is more than just walking to the engine.





THE CHAIRMAN: Oh, yes, I am considering all that. I was talking also about yard. There would be no use walking to the movement without having the necessary information and equipment.

HON. MR. MARTINEAU: Would that mean that the crew would not be ready to go to work until 10 or 15 minutes after 8 o'clock?

MR. SINCLAIR: Sometime after 8 o'clock.

HON. MR. MARTINEAU: A few minutes after 8 o'clock.

MR. SINCLAIR: A few minutes after.

HON. MR. McLAURIN: There would be time to get a pail of water and sweep out the cab while the foreman is getting his switching list?

MR. SINCLAIR: That is the position. Just what they have done is set out in the company's observations, and I have analyzed all that. I do not think it is necessary for me to go over that at this time.

THE CHAIRMAN: I do not think it would be necessary to go over any particular incidence. It is the general principle that is important, as long as we understand it.



MR. SINCLAIR: With regard to final yard inspection, I do wish to point out that the evidence is that there are no duties required of the fireman in final inspection. That is the evidence of Mr. Woodland. No Brotherhood witness has given any evidence of firemen being required to take up time in final inspection on diesel locomotives in yard service. The observations of company officers covering 40 cases, showed that in almost three-quarters of these the fireman did nothing at all in the way of final inspection. He just stepped off the engine and walked away.

HON. MR. MARTINEAU: It does not matter whether there is a jillion things for them to do, or just nothing for them to do, you are going to pay them for the time they expend doing it, under your proposal?

MR. SINCLAIR: That is right.

HON. MR. McLaurin: We do not need to be concerned with whether they have to look at this or that or anything.

MR. SINCLAIR: That is so, both in the case of yard and road. Our proposition is a very simple one. If the Commission wants an analysis of what has been happening in the past or what has been going on or how these things came up,



I can give it to them because there is evidence of it.

THE CHAIRMAN: I do not think we want that. What we want from you is your complaint about the present system and why you complain and what your proposition is and the reasons why you say it should be put into force. We do not need the details on any particular point, and I would be surprised if Mr. Lewis argues on that basis. If we understand your theory then we will be able to understand Mr. Lewis' theory when he gets on his feet.

MR. SINCLAIR: Let me see if I can set it out in this way, in so far as yard is concerned.

My submission is that the evidence of the specific observations made by officers show that, first, because of the assignment of yard engines in continuous service, the average time firemen assigned to such engines can be on the engine cannot be more than eight hours. In spite of this, on diesels the fireman receives pay for eight hours and twenty-five minutes, in both the east and the west, and on steam power for eight hours and thirty minutes in the east, and eight hours and forty-five minutes in the west.



Secondly, that some of the work being done by firemen in checking supplies and making mechanical checks on diesels is contrary to specific instructions by the company as set out in pages 6 and 10 of Exhibit 7, in the light of the engineman's duties as set out in Exhibit 114.

Thirdly, that on diesels and steam power the arbitrary times specified in the collective agreements are excessive. That is my position on yard arbitraries.

THE CHAIRMAN: Then you will deal now with road?

MR. SINCLAIR: Yes.

HON. MR. McLAURIN: May I interject? There is a lot of road we have covered with yard. I mean, there is considerable similarity between the two. Would it be possible just to cover road because we do not want to go over anything twice?

MR. SINCLAIR: That is so, but I do not think it is as easy as that.

HON. MR. MARTINEAU: I would agree with you that it is not as easy as that.

HON. MR. McLAURIN: I am inquiring rather than suggesting.

MR. SINCLAIR: We have no shift





time on the road. If there was shift time on the road I would say "Yes" to that.

HON. MR. McLAURIN: I see.

MR. SINCLAIR: As the Commission will have observed from Exhibit 5, the arbitrary allowances for diesel power taken from or to shop tracks are 30 minutes preparatory and 15 minutes final in both the east and the west. The only preparatory and final duties of the fireman, apart from booking out and in, are to assist the engineman. He is specifically told he is not required to perform mechanical checks or to see that the unit is properly equipped and supplied with fuel, lubricating oil, water or sand when it has been checked by shop staffs.

Exhibit 7, pages 6 and 10.

In the same way, when a unit has been checked by the shop staff the helper is not required to perform mechanical checks. He is specifically told he is not required to perform those checks or to ascertain that the unit is properly equipped and supplied with fuel, lubricating oil, water or sand.

The duties of the engineman are set out in Exhibit 114, pages 1 and 4, and I am talking about road now. It will



be seen from a reading of those that the fireman is not required to assist the engineman in performing them, although when a fireman is there the engineman may delegate some of them to him. But certainly they can be done by one man and it is not necessary to have the fireman there to assist the engineman in performing them. That is my point. Mr. Fraine dealt with Exhibit 114.

Fraine, Volume 18, page 2360.

Volume 19, pages 2445-2448.

Mr. Woodland dealt with the matter of a diesel running out of fuel or anything of that nature in Volume 25, pages 3308-3311.

Mr. Woodland said that it was not necessary to check the governor oil, cooling water, lube oil or fuel before moving off the shop track, or at a run-through point. He said that if a diesel ran out of fuel on the road the engineman and fireman would not be held responsible.

Mr. Woodland said that even when he, a supervisory officer, was there on the engine, when they came in the fireman immediately left the locomotive on arrival at the shop track or change-off point without any pretence whatever of making any inspection.

Woodland, Volume 25, pages 3312-3313.



HON. MR. McLAURIN: Are you going to deal with road, and then go on to steam on road?

MR. SINCLAIR: This is road, diesel.

THE CHAIRMAN: I suppose you are referring to that sort of evidence merely to substantiate or reinforce the company's position that there is nothing to be done? Those observations show that those particular employees recognized that fact?

MR. SINCLAIR: That is right.

THE CHAIRMAN: Whether they did or not, the company could say, "We want you to inspect," or "We do not want you to inspect"?

MR. SINCLAIR: That is right. May I give just one example of that? Take the final inspection which is covered on page 4 of Exhibit 114. I think this illustrates my point.

You will see that the only duty an engineman has before leaving a locomotive when going off duty at a run-through point is to complete Form MP-74. That is all he has to do.





Now the only thing that the fireman has to do is to assist the engineman. The position we have then is this: the engineman, if he wishes to do so, can ask the fireman to complete form M -74 which may mean that all the engineman is going to do is sign his name, or, on the back of the form, he is, maybe, going to put "mileage so and so" or if it did occur "cab heater not working" or "defroster not working" or "window rattling" or, possibly, an alarm if it did occur and the mileage at which it happened. And yet for that not only would the engineman be paid but the fireman would be paid also, and that is what we are interested in, -- a clear 15 minutes, when all he would have to do would be to go along the <sup>to</sup> booking-out place.

There is one other point I wish to bring to the attention of the Commission and I think this also illustrates something about run-through. There is no justification for the preparatory arbitrary on locomotives taken off the shop track being double that for the locomotives at the run-through points. One is 30 minutes and the other is 15 minutes. The 15 minute arbitrary both preparatory and final at run-through points is, again, easily demonstrated to be unrealistic. In some cases the preparatory allowance is greater than the time, for instance, of a passenger train at the change-off point. An example of this mentioned



in evidence was Ottawa. The Canadian is allowed only ten minutes while both incoming and outgoing crews receive the arbitrary allowance of 15 minutes. In British Columbia, as can be seen from pages 7, 11 and 13 of exhibit 25, The Canadian is allowed only five minutes at terminals such as Kamloops and North Bend although the firemen will still receive 15 minutes preparatory and 15 minutes final. That is exhibit 25, British Columbia -- you will have to look at the two --

THE CHAIRMAN: We will take your word for it.

MR. LEWIS: Mr. Gossage dealt with Ottawa at volume 1, page 92, and what I have just said is taken from the document.

Now, if I may go on to steam. On steam the preparatory duties of a fireman are certainly more extensive than they are on the diesel. He is in charge of the fire and water and he has to look after that, though the time that will be consumed will vary according to the condition in which the fire has been left by the shop maintenance forces, or in which it has been left by his mate if his engine has just come in. In one case observed by Mr. Johnson, a road locomotive moved off the shop track six minutes after the fireman boarded it. I refer the Commission to exhibit 55. However, the fireman normally reports for duty at the time



specified in his agreement, that is, in the case of a steam locomotive, 30 minutes before it is ordered to leave the shop track. Naturally, if the man is there he will spend that 30 minutes either in the booking room or walking slowly over to the engine, or walking round the engine whether or not there is work for him to do.

With regard to final inspection two observations were made by Mr. Alver of road steam power arriving at the shop track at West Toronto and he observed the fireman leaving the engine in one case two minutes and in the other case three minutes after it stopped on the shop track.

Exhibit 82.

As in the case of firemen on yard steam power, the road fireman is required to bank his fire and see that his boiler is filled with water, but these duties can be performed while the engine is on its way to the shop track as it is going through the yard or as it is going from the place he has left his train down into the shop track -- that banking of fire and turning it on so that the water will get into his boiler, that can all be done before his engine ever arrives at the shop track, and is demonstrated by this to be the practice.

And now, as to the running of steam power, in the prairie and Pacific regions the allowances are 45 minutes preparatory and 30





minutes final, although the duties to be performed are exactly the same as those in the east. That is a good example of the point that there is no justification for one being different from the other aside from the arguments there must be with respect to duties on steam.

HON. MR. McLAURIN: We are not deciding that. You made your deal under the collective agreement and if the boys out west have made a good deal we are not supposed to interfere with it as a deal.

MR. SINCLAIR: The point is that it is open as a provision in the agreement. It may be modified, and the question is how and to what extent.

Next I propose to deal with work trains. This may be just a little difficult to find and maybe I can be of some assistance to the Commission by saying that there are special provisions in the agreement dealing with the payment to firemen on work trains only in respect to the times when they are tied up on the road and only in respect to the final inspection. As I said earlier, other than that they vary the same as any other engine --

THE CHAIRMAN: Are you making two differences? "When they are tied up on the road, and final" -- is that all one thing -- final when tied up on the road?

MR. SINCLAIR: That is right, final when tied up on the road.



# Introduction

The purpose of this document is to provide a comprehensive overview of the project's objectives, scope, and timeline. The project aims to develop a new software application that will streamline the workflow of our department and improve overall efficiency. The scope of the project includes the design, development, testing, and deployment of the application. The timeline for the project is estimated to be 12 weeks, starting from the beginning of the month and ending by the end of the month.

The project is led by the Project Manager, who will be responsible for coordinating all activities and ensuring that the project is completed on time and within budget. The Project Manager will work closely with the Development Team, who will be responsible for the actual development of the application. The Development Team will be composed of several members, each with specific responsibilities and expertise.

The project will be divided into several phases, each with its own set of tasks and deliverables. The phases are: Requirements Gathering, Design, Development, Testing, and Deployment. Each phase will have a specific start and end date, and the project will progress through these phases in a sequential manner.

The project is expected to have a significant impact on our department, as it will allow us to automate many of our current manual processes. This will not only save time and resources but also reduce the risk of errors and improve the quality of our work. The project is a high priority for our organization, and we are committed to ensuring its success.

We will provide regular updates on the progress of the project and any changes that may be required. We encourage all stakeholders to provide input and feedback throughout the project, as this will help us to ensure that the final product meets the needs of our users and the organization.

Here again there is a difference because on work trains whether steam or diesel the arbitraries are the same. There is no distinction.

THE CHAIRMAN: Where do we find that? Is it in exhibit 5?

MR. SINCLAIR: No. Although the final is not here and the special is not here, the preparatory for a work train is here.

THE CHAIRMAN: Is that in freight service?

MR. SINCLAIR: Freight service shop preparatory for steam. It would be 30 and 30.

THE CHAIRMAN: Yes. All right. Shop preparatory, did you say?

MR. SINCLAIR: When tied up. The final.

THE CHAIRMAN: On the road.

MR. SINCLAIR: That is right. If it is tied up in a terminal this does apply, --

THE CHAIRMAN: What is the agreement?

MR. SINCLAIR: The agreement with respect to the special circumstances of it being tied up on the road is one hour on either steam or diesel.

THE CHAIRMAN: What does that mean? Does it mean that if after any breakdown or something of the kind the work train does not get back to its depot the crew is paid off the

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eight hours plus all the overtime plus one hour, or what?

MR. SINCLAIR: Well, it can help on breakdowns but the way work trains work is sometimes they don't come into a terminal and it would be normal for them if they were going to tie up at, say, Big Boulder, Saskatchewan, or any place.

THE CHAIRMAN: Any place.

MR. SINCLAIR: They are going to tie up there and the man gets miles or hours depending on how his pay has been working. Then he gets --

THE CHAIRMAN: He gets his pay plus the hour?

MR. SINCLAIR: Just like in exhibit 143, he will go through this except at the end he will get one hour whether this is a diesel where the engineman just throws the brake and walks off or whether it is a steam engine where he has to bank his fire or anything, it would still be an hour.



Fraine dealt with this and it is our submission that it is very excessive and unjustifiable.

THE CHAIRMAN: What is your proposition -- is it the same as the other?

MR. SINCLAIR: Yes, the proposition with respect to all these is the same. Perhaps I should note the reference to work trains.

Fraine, Volume 18, pages 2363-2368.

Now I will deal with the hostling arbitrary if I may and, as I say, that applies where there is no man assigned to the service and where the fireman would be with the engineman when the engineman moves the engine into a shed or out of a shed.

Now in the west, the time paid under the agreement as a hostling arbitrary to the fireman is thirty minutes. This can be found on page 30 of Exhibit 2.

I should, maybe, have told the Commission where the work train arbitrary can be found, although perhaps it is not necessary. It is on page 21 of Exhibit 1 and page 25 of Exhibit 2. That refers to work trains.

The hostling arbitrary is found on page 26 of Exhibit 1 and page 30 of Exhibit 2. It will be seen that in the west the hostling arbitrary is thirty minutes, while in the east it is fifteen minutes.

THE CHAIRMAN: One minute. I don't see anything on page 30 of Exhibit 2.





MR. SINCLAIR: Article 15.

HON. MR. McLAURIN: We seem to have different editions of the exhibit.

THE CHAIRMAN: I see. In between pages 30 and 31 there are two leaves which are not numbered.

MR. SINCLAIR: As I say, it will be seen from these exhibits and articles which I have referred to that it is thirty minutes in the west and fifteen minutes in the east and our position is that there is no justification for any difference, nor is there any justification for an arbitrary being fixed at all. The men should be paid for the time it actually takes them to do the work.

There is one other point with regard to this that I might refer to. It was put up twice during the hearings and it had to do with the interpretation of checks. This was put by Mr. Lewis to two of the witnesses of the Canadian Pacific and had to do with the interpretation of Rule M, and it was suggested that the matter could be left until the time of argument when we could let the Commission have our views on it.

THE CHAIRMAN: What is the page?

MR. SINCLAIR: Page 4 of Exhibit 27. Mr. Lewis, of course, read the first paragraph of Rule M. My point is this: that Rule M, like any other rule or clause should be read in its entirety to get its meaning and I say



that by reading the whole of Rule M it is easy to see that this is a safety rule. Paragraph 1, which is the only one that could be looked at as checks that might be required and it will be seen from this that it is a safety rule. The paragraph, from its own wording, has nothing to do with checking whether the engine was equipped with fuel oil and supplies, or drinking water, or whether the cab needs to be swept out. It is directed towards checking safety equipment, as can be seen, such as the bell and the whistle, the condition of the lights, the air brakes and the hand brake and flagging kit. These safety items are still required to be checked by the engineman. As Mr. Fraine said in answer to Mr. Lewis what was set out in Exhibit 114 as to the duties of the engineman covered all that is involved in safety. Those are Mr. Fraine's words. Mr. Fraine took the position that it was within the province of the railway to say what checks were required by the engine crew for safety and they have done so.

Fraine, Volume 19, pages 2438-2439.

Now, Mr. Lewis' suggestion was that the crew must observe the condition of the equipment under the first paragraph of Rule "M" --

HON. MR. McLAURIN: He had not read the rule book then.

MR. SINCLAIR: If it is not necessary to deal with this I would be glad to drop it. But I think it is clearly apparent that you



cannot say that an engineman or a fireman being required to check equipment means checking the locomotive. To show how wrong -- if I may use so strong a word -- my friend's interpretation of this is, let me point out that this rule also applies to trainmen and conductors. Surely no one would suggest that after a carman has checked a train before it can leave a terminal the trainman must walk the whole train and observe the running gear, couplers, and brake equipment of every car which has already been inspected by a competent carman to see that the work of the carman has been carried out properly and in accordance with his duties.





That is all I have to say on that point. Now, if I may just put it, the company's proposal on arbitraries is, as I stated very simply and I submit is very logical.

THE CHAIRMAN: We understand it.

MR. SINCLAIR: You understand it? Very well, then.

THE CHAIRMAN: They are paid for work done, that is the principle.

MR. SINCLAIR: I do think that the Commission then would like to know that the Firemen's Union agree with that as a principle. Their only executive officer called, Mr. Druce --

THE CHAIRMAN: Not in this application.

MR. SINCLAIR: Yes, in this application and this proceeding.

THE CHAIRMAN: What did Mr. Druce say?

MR. SINCLAIR: At pages 7826 and 7827 agreed with the company that firemen should be paid for what they are required to do and should not be paid for what they are not required to do and that is all we are asking for in our proposition.

THE CHAIRMAN: He was not authorised to speak for the Union on this particular matter?

MR. SINCLAIR: Oh yes, he was introduced as their man speaking to arbitraries.

THE CHAIRMAN: Then, you mean the point is admitted in your favour now?

MR. SINCLAIR: I think so.

THE CHAIRMAN: All right.



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MR. SINCLAIR: I should<sup>like</sup>/Mr. Lewis to argue that it was not.

THE CHAIRMAN: You would like him to confirm it?

MR. SINCLAIR: Yes.

THE CHAIRMAN: I just want to ask you this, Mr. Sinclair, in connection with the final for work trains and the hostling arbitrary, the duties respectively required to be done in those circumstances, are they laid down anywhere beyond the items in the agreements themselves covering the allowances for them?

MR. SINCLAIR: Yes, for instance, an engineman -- the fireman's duty is always the same, that is, his only duty, taking a diesel, is to assist the engineman so that to understand whether he would have any duties that would take up any time you have to look upon what an engineman is required to do and then you have to say, "can he do it himself or does he need a fireman's assistance" and that is why you always have to put together the two of these and looking at Exhibit 114 you do find duties that an engineman -- page 3 of Exhibit 114 when he takes charge of a locomotive at an outside point where no shop staff is on duty and available he has different things to do. They are more complete.

THE CHAIRMAN: But what I was speaking about is take the final inspection of work trains when they are tied up?

MR. SINCLAIR. Yes.



THE CHAIRMAN: Are those duties laid down any place?

MR. SINCLAIR: For a fireman?

THE CHAIRMAN: Well, for the engineman because you say all the fireman has to do is to assist him. My question was do we find the duties specified other than in the agreement providing for payment? Well, you can look it up and let us know and the same for the hostling.

MR. SINCLAIR: Well, hostling, sir, apparently there is some confusion here because hostling, the man gets his arbitraries and the hostling as an additional arbitrary on top of all that. A hostling arbitrary has nothing to do with these other things and all he has to do is assist as the word hostling says to put the engine in.

THE CHAIRMAN: The only hostling I am talking about here is when the engine is taken out of or put into a shop when there is no other employee there assigned to that work.

MR. SINCLAIR: All he does, as the word says, is he is a hostler, he assists in the movement from here to here (indicating).

THE CHAIRMAN: I am just asking you if that is in the record any place or can we take it it is agreed that your statement is correct? That is all there is to it.

MR. SINCLAIR: A hostler is a hostler.

MR. LEWIS: It is not on the record other than what is in the agreements, if my

10. 10. 1916.

Dear Sir,

I have the pleasure to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,  
Your obedient servant,

J. H. [Signature]

I am, Sir, very respectfully,  
Your obedient servant,

J. H. [Signature]

memory is correct.

MR. SINCLAIR: You are really asking, sir, what does "hostler" mean.

HON. MR. McLAURIN: Is not a hostler someone who might be an engineer or fireman, he jumps into the engine and moves it so far. He may throw in some coal, put in the throttle but does not go too far but he looks after it. When a fireman hostles is not he doing the work?

MR. SINCLAIR: No, he only assists the engineman. The engineman stays on and takes it in while the hostler himself might work the engine.

THE CHAIRMAN: I suppose you say as far as the term is concerned, take steam, which is perhaps the best illustration, he gets paid on a time or mileage basis or whatever it is until he is through with the engine and he gets this extra hostling arbitrary allowance because he has to go to the shed with the engine.

MR. SINCLAIR: That is right.

THE CHAIRMAN: But his ordinary pay runs up to the time he steps off the engine?

MR. SINCLAIR: At the point where she is tied up which he then may have to move over to another track or a a switch to get off the passing track. If you tie up on the passing track you may have to pull her over to a back track to get into the shed.

THE CHAIRMAN: His pay whether overtime or straight time ends at the point where the engine can be said to come to rest but before it proceeds to the shed?







MR. SINCLAIR: Yes, that is right.

THE CHAIRMAN: And the hostling allowance covers its proceeding to the shed and the fireman moving it?

MR. SINCLAIR: Yes. I think I may leave that by putting to the Commission what I said I would, how I think that this question 3 on arbitraries should be answered.

It is my respectful submission that the answer to the Commission to this part of the third question should be that the arbitrary payments specified in the agreements and set out on page 8 of Exhibit 1-A and pages 8 and 9 of Exhibit 2-A, page 8 of Exhibit 3-A and page 7 of Exhibit 4-A should be abolished and that provisions be included in each of these agreements that in road passenger and freight service and for the hostling arbitrary initial terminal delay shall commence at the time firemen are instructed to report for duty and final terminal delay shall terminate at the time firemen book off duty; in work train and yard service a fireman's day shall commence at the time he is required to report for duty and shall terminate at the time he is released from duty subject to a minimum of eight hours.

THE CHAIRMAN: You will have to add to that list of pages won't you, page 26 of Exhibit 1 and page 30 of Exhibit 2?

MR. SINCLAIR: Well, the reason I gave those pages of the A's was that they are

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all brought together instead of jumping all over into the various agreements. Now, 1-A, 2-A, 3-A and 4-A, the pages I gave, that is a really a supplement to Exhibit I which is now in force and they are drawn together there. It is just a little shorter way of putting it, I thought.

THE CHAIRMAN: It covers the whole ground?

MR. SINCLAIR: Yes, that is right. Now, I have mountain differential, My Lord.

HON. MR. McLAURIN: Can't you get through that in ten minutes? We have a very special reason.

MR. SINCLAIR: I thought I might have done arbitraries in ten minutes.

HON. MR. MARTINEAU: I must warn you I do not understand much of the mountain differential and I will need a long explanation.

MR. SINCLAIR: Well, I must say after four days -- well, I am in the hands of the Commission. If they want me to argue it now, I will argue it.

THE CHAIRMAN: I would say, Mr. Sinclair, that perhaps what you are referring to is a short day and a little while ago in connection with "early quits" and perhaps we have all had enough for today and it would be better if you reserved the commencement of your mountain differential until the morning. We will be all fresher then.

MR. SINCLAIR: Thank you.

--- At 4.50 p.m. the Commission adjourned until 10.30 a.m. Friday, November 1, 1957.



Press

**ROYAL COMMISSION ON EMPLOYMENT OF FIREMEN  
ON DIESEL LOCOMOTIVES IN FREIGHT AND YARD  
SERVICE ON THE CANADIAN PACIFIC RAILWAY**

**66**

**PROCEEDINGS**

DATE: Nov. 1, 1957

PLACE: Ottawa, Ont.

PAGES: 9309 - 9355

VOLUME: 66

E. L. FEATHERSTON  
SHORTHAND REPORTER  
241 MANOR AVENUE  
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OTTAWA, CANADA









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November 1, 1957

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ROYAL COMMISSION ON EMPLOYMENT OF  
FIREMEN ON DIESEL LOCOMOTIVES IN  
FREIGHT AND YARD SERVICE ON THE  
CANADIAN PACIFIC RAILWAY

Proceedings of public  
hearing held at Ottawa,  
Ontario, Friday,  
November 1, 1957.

PRESENT:

Hon. R. L. Kellock,	Chairman
Hon. C. C. McLaurin,	Member
Hon. Jean Martineau,	Member
Douglas M. Fraser,	Secretary
A. R. Winship,	Asst. Secretary

APPEARANCES:

C. J. A. Hughes, Q.C.,	Representing the Commission
I. D. Sinclair,	Representing the Canadian Pacific Railway Company
David Lewis,	Representing the Brotherhood of Locomotive Firemen and Enginemen

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Friday,  
November 1, 1957.

66th DAY

MORNING SESSION

---The Commission resumed at 10.30 a.m.

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MR. SINCLAIR: Mr. Chairman and gentlemen, the last point I wish to discuss is that of the mountain differential. The mountain differential forms part of the third question before the Commission, the second part. This question involves firemen in both passenger and freight service.

Mr. Gossage has explained that the mountain differential is a payment to firemen in addition to the standard rate and which is added to the rate for the basic day in certain specified territories with mountain grades.

Gossage, Volume 1, page 117.

Exhibits 8 and 8A show the actual locations of the territories on which the mountain differential applies and give the total of such mileages as 473.4. All of the mountain differential territory is in British Columbia with the exception of five miles in Alberta, from Lake Louise to the Continental Divide.

At the time Mr. Gossage gave his evidence he explained that the differentials above standard rates were 78 cents in passenger service for a day of 100 miles or less, and 72 cents in freight service. These rates under the agreements in effect have since





June 1, 1957, been increased by 5 per cent above the rates in effect March 1, 1956, and are now 82 cents in passenger service and 75 cents in freight service.

Gossage, Volume 1, pages 118-119.

Included also in Exhibits 8 and 8A are the mileages by locations on which the valley differential applies. You will recall Mr. Gossage's explanation that this differential of 9 cents above standard rates in both passenger and freight service applies throughout the balance of British Columbia. While the valley differential as such is not an issue before the Commission it has been explained in evidence because of the relationship which it bears to the Canadian Pacific proposal for the modification of the mountain differential.

The company's proposal is that firemen in mountain territory be paid the valley differential rate of 9 cents per 100 miles, both passenger and freight. This would give a uniform differential rate to all firemen in the whole territory to which differential applies. This proposal is, I submit, a reasonable one in the light of present-day operating conditions in differential territory.

The evidence dealing with a comparison of operating conditions in



differential territory.

The evidence dealing with a comparison of operating conditions in British Columbia and operating conditions in other parts of the Canadian Pacific system where no differential applies would, I submit, justify a proposal to eliminate the mountain differential in its entirety.

THE CHAIRMAN: On Exhibit 8A the blue shows the valley differential area?

MR. SINCLAIR: That is right.

THE CHAIRMAN: That is all in British Columbia?

MR. SINCLAIR: Yes. While the evidence does justify, in my submission, the elimination of the mountain differential entirely in some respects, that is not the proposal. The proposal is a reduction in the mountain differential to the rate of the valley differential.

Gossage, Volume 1, page 133.

The history of the mountain differential goes back a great many years, for at least half a century. Mr. Gossage stated that there is actually no documentary evidence available which sets forth the reasons why differentials above standard rates were granted to firemen in differential



territory, as was provided in the original agreements. What evidence there is clearly indicates that differentials were related to the hard work required on heavy grades and the slow rate of speed. The differential in the territory where it was applicable did not vary with the size of the locomotive, but the work of the firemen in that territory compared to the work of firemen in territories where it did not apply was undoubtedly an important factor.

THE CHAIRMAN: What is that again?

MR. SINCLAIR: The work of the firemen in mountain differential territory as compared to the work of firemen in territories where the differential did not apply was undoubtedly an important factor in the establishment of the differential.

THE CHAIRMAN: You mean the heaviness of the labour?

MR. SINCLAIR: That is right.

Gossage, Volume 1, pages 120-127.

Druce, Volume 55, pages 7827-7829.

Exhibit 9, which is headed "Quotation from Supplement to Firemen's Schedule effective February 1, 1916," bears out the historical relationship between the differential payment and





gradient, as does Exhibit 10, which is a decision of the Canadian Railway Board of Adjustment No. 1 made on April 10, 1919, which established the differential for mountain pay on the Kettle Valley Railway on the basis of the proportion of mountain grade mileage to total mileage.

Gossage, Volume 1, pages 120-127.

Volume 3, page 358.

THE CHAIRMAN: Does the evidence show the reason for the difference between the rates applicable to valley and mountain?

MR. SINCLAIR: No.

THE CHAIRMAN: Their origin?

MR. SINCLAIR: I think there is nothing in the evidence, Mr. Chairman. The only thing that is in the evidence is this last point I made. The Exhibit 10 shows the relationship between gradient and non-gradient territories. It shows the application of the mountain differential to gradient territory with the non-gradient territory taking the rate that was applicable in the balance of British Columbia. That was later. The first establishment of valley differential was many years ago and we do not know why there was that difference.

THE CHAIRMAN: What do you mean by non-gradient territory?





MR. SINCLAIR: Well, that exhibit shows that the dividing line is a grade of 1.8 per cent and over.

THE CHAIRMAN: Is that Exhibit 10?

MR. SINCLAIR: Exhibit 9 shows that. It is headed, "Grades of 1.8 per cent and over." Perhaps I can quote from the evidence given by Mr. Gossage in Volume 1, page 132, where you, Mr. Chairman, asked this question:

"Q. You explained the reason for the mountain differential. What as a matter of interest is the reason for the valley differential, and the difference between the two?

A. With respect to the valley differential it would be largely because in the valley territory speed is still somewhat restricted as compared with speed on the prairies. There is a great deal of sharply curved track where it is necessary to impose speed restrictions and the movement over the road is not as fast as on the Prairie or the Eastern subdivisions. That would be about the only justification which remains for the payment of differential in valley territory."



THE CHAIRMAN: That is as between the valley and the plain?

MR. SINCLAIR: Yes. Then there is another question:

"Q. I was thinking about it at the time when these differentials arose.

A. When they arose no, because the gradings in valley territory are no worse than the gradings experienced in many areas in the East and indeed in areas on the Prairies."

I think the only conclusion that can be drawn from the evidence is that the reasons behind it are not known. We can only assume or infer from the evidence that the work involved on grades of 1.8 per cent or over established the differential and then there was the slowness of the speeds which was a factor in establishing the valley territory differential.

THE CHAIRMAN: A grade of 1.8 per cent or more establishes the mountain territory differential?

MR. SINCLAIR: That is right.

THE CHAIRMAN: Or the mileages; what establishes the valley differential mileages?



MR. SINCLAIR: Just the area of British Columbia as a whole other than where the mountain differential applies. Of course it is not 1.8 per cent and over throughout the entire mileage. The whole of British Columbia is covered by a differential.

THE CHAIRMAN: Either valley or mountain?

MR. SINCLAIR: That is right. Where the grades were heavier they have the mountain differential, but even where the mountain differential applies, as the Commission will recall from its observations, there are short areas where there is no grade. For instance, from Golden to Donald, over which the Commission rode.

THE CHAIRMAN: Well, they could hardly divide it up for every 100 yards.

MR. SINCLAIR: That is right. I think I can put it this way, to answer your question. The whole of British Columbia is differential territory, but it was divided between mountain and valley differentials on the basis of gradient. The gradients were related to the harder work performed by the firemen.

The differential as a whole throughout the province was related to





the slower speeds throughout the whole province on account of curvatures and things of that kind. In its origin that justified the differential rate, and then on top of that there was the higher differential which applied where the gradients imposed greater work or even slower speeds.

THE CHAIRMAN: I notice that Exhibit 9 is dated February 1, 1916, and Exhibit 10 is dated April 10, 1919. Exhibit 10 came into effect when the Kettle Valley Railway was integrated with the Canadian Pacific, is that right?

MR. SINCLAIR: That is right. The evidence shows that Canadian Pacific has long made these differential payments to engine crews and to train crews in Mountain territory. Mountain territory, particularly with steam power, required extra skill by the engineman in the handling of the throttle and air brakes on heavy grades. For the train crew there was the additional work of setting up and releasing retainers and riding the tops of cars down the heavy grades, as well as the cutting in and cutting out of assisting locomotives. The records of Canadian Pacific show that the earliest agreement now available containing



a mountain differential is the agreement of December 1, 1897. A differential has been paid to enginemen and firemen at least since that date.

Volume 41, pages 5676-5677.

Druce, Volume 55, page 7811.

Just to clear up that small point. In answer to a question as to why Canadian Pacific had concluded an agreement with the Brotherhood of Locomotive Engineers retaining the mountain differential, Mr. Gossage pointed out that this particular settlement had been made subsequent to the formation of this Commission. When the company withdrew its proposal for the removal of the mountain differential it made the statement before the Conciliation Board dealing with the issues that it would not be proper to force the issue with the enginemen in a conciliation proceedings when the same matter was being dealt with by this Commission.

With regard to the agreement made with the Brotherhood of Railroad Trainmen in which the mountain differential was retained, the evidence is that these employees had not derived the monetary benefit from dieselization



that the engine crews had because the added weight on drivers of multiple unit diesels did not give them added compensation.

Gossage, Volume 3, pages 291-293.

As the Commission knows, there is a difference in the work of various segments of the train crew, that is the enginemen, the firemen or the train crew made up of conductors and trainmen. There are different factors and different points to be analyzed in regard to each of them, but of course we have been concerned only with an analysis of the duties of the firemen.

The position of Canadian Pacific is that the conditions which may have justified the added payments above standard rates in the past in Mountain territory have so altered that the present Mountain differential is no longer warranted.

The fireman on a diesel is of course not responsible for the production of power. When a diesel is required to generate extra power to pull a train up a mountain grade the engineman operates the controls and the diesel engine does the rest. Nothing in the way of extra effort is required of the fireman.

I come now to the average speed



of trains in Mountain territory and it is my view that these no longer justify the payment of the Mountain differential. You will recall that in describing the origin of the Mountain differential Mr. Gossage said that the slower speeds of trains over the mountain grades had at one time the effect of requiring the firemen in Mountain territory to work a greater number of hours in order to earn the same number of miles in a month as did fellow employees in the Prairie and Eastern regions.

Gossage, Volume 1, page 127.

Volume 3, page 298.

These slower average speeds were due largely to the frequent stops that had to be made to attach and detach assisting steam locomotives; to set up retainer valves at the tops of grades and release them at the bottom; to inspect trains part way down the grade in order to ensure that the severe strain imposed on the wheels by the brake shoes have not caused overheating; and finally to replenish the tender with water, and of course the curvatures.





Hooley - volume 31, pages 4252-4263.

The introduction of the diesel has resulted in the removal of many of these delays. It is no longer necessary to stop at designated locations to attach and detach assisting engines from the front, middle and rear of the train. The necessary number of diesel units to handle the tonnage now work through between Calgary and Revelstoke.

You will recall Mr. Crump's explanation of the airbrake and dynamic brake systems and his statement that "Dynamic braking to my mind has been one of the spectacular developments in diesel operation". On heavy downgrades on steam operated trains the engineman had to make frequent airbrake applications to control the speed of the train. Because of the frequency of the brake applications there was insufficient time when the brake was released to allow the train line to become recharged before the brakes were again applied. Therefore, in order to control the speed of the train and to ensure that adequate braking power was available to the engineman when required, pressure retainer valves were applied by the members of the train crew on the individual cars. These valves had the effect of preventing a complete release of the train brakes while the engineman



released his airbrake valve for the purpose of recharging the train line. The setting up of the retainer valves was performed while the train was stopped but the release often was done by trainmen walking over the tops of cars while the train was moving. The continuous pressure of the brake shoes against the car wheels generated a great deal of heat and this necessitated stops being made for thermal inspections.

Crump - volume 35, pages 4861 - 4869.

Hooley - volume 31, page 4254.

Mr. Crump then went on to describe how the dynamic brake of the diesel locomotive has largely replaced the use of the airbrakes on downgrades. This revolutionary feature of the diesel was explained in detail by Mr. Woodland, who summed<sup>up</sup> its action in layman's terms, in my respectfully submission, when he said ~~that~~ it had the same effect as placing an automobile in second gear when descending a grade.

You will recall the testimony of various Company witnesses that retainer valves need no longer be used on diesel-hauled trains where the tonnage handled downgrade does not exceed the tonnage that the same locomotive can handle when ascending the grade. The use of the dynamic brake under



these circumstances eliminates the delays caused by setting up and releasing retainers and the ensuing inspection.

Woodland -- volume 24, pages 2316-2317.

Volume 25, pages 3313-3317.

These improvements in train operations brought about by the diesel, together with other factors which I shall speak of later, have, in my submission, effectively removed any unfavourable comparison which may once have existed between that part of British Columbia where the Mountain differential applies and the remainder where the Valley differential applies.

THE CHAIRMAN: You said a little earlier there that the diesel had removed many of the conditions which had formerly obtained and which justified the Mountain differential. What are the ones that the diesel did not eliminate?

MR. SINCLAIR: Well, what is still there -- and the only thing that is still there, in my submission that the diesel has not removed -- is the curvature and it is my submission, and I am making this point later with your permission, that the curvature in mountain territory is no different than in valley territory and I will refer to the Commission specific points to illustrate that.





I will put it this way: there is also the factor of climatic conditions, slides and so on but again my submission will be that on the evidence that situation is the same in valley territory as it is in mountain territory.

Dealing further with speeds, Mr. Gossage said that the average schedule speed of symbol freight trains at the time he gave his evidence was a little over 24 miles per hour on the Mountain Subdivision between Field and Revelstoke and just over 25 miles per hour on the Thompson Subdivision between Kamloops and North Bend -- a difference of about one mile per hour between mountain territory and valley territory.

Now, in response to a request made by Mr. Lewis, a comparison was made between similar trains on the same territories when steam trains only were operated and the information was read into the record that, based on the average of July 1950 and February 1951 (that is in the steam days) scheduled speeds on the Mountain Subdivision were 16.8 miles per hour and on the Thompson Subdivision 21.2 miles per hour -- a substantial difference indeed between mountain and valley territory and that is found at volume 1, page 128 of Gossage's testimony and where I read the answer to the request of Mr. Lewis into the record at volume 18,



page 2385.

THE CHAIRMAN: What is the page again?

MR. SINCLAIR: Volume 18, page 2385. That is where I read into the record the answer to Mr. Lewis' request.

Exhibit 115 sets forth the schedule terminal to terminal times of the fastest and slowest symbol freight trains on various subdivisions on the Eastern, Prairie and Pacific Regions. Because the distances between terminals varied from 103.5 miles on the Galt Subdivision to 131.9 miles on the Sherbrooke-Megantic Subdivision, Mr. Fraine sought to achieve a realistic common denominator for comparative purposes and did so by expressing the total terminal to terminal time as a percentage of the equivalent basic day, determined by dividing the mileage by  $12\frac{1}{2}$ , the conversion factor of the agreement. Thus he showed that the slowest train on the Mountain Subdivision took five hours and 25 minutes or 53.7 per cent of the equivalent basic day while the slowest train on the Thompson Subdivision took five hours and 15 minutes or 54.0 per cent of the equivalent basic day. Similarly, the fastest train on the Mountain Subdivision compares favourably with the fastest train on the Thompson Subdivision and it is significant to note, in my



submission, that the time of trains on both these British Columbia subdivisions compare very favourably with the fastest and slowest times of trains operated on the Sherbrooke-Megantic Subdivision where there is no differential at all.

Fraine -- volume 18, pages 2372-2384.

Exhibit 115.

Now, Mr. May --

THE CHAIRMAN: Before you go any further those figures where steam trains were operated only, I have forgotten what is the position about dieselization in that territory.

MR. SINCLAIR: As of now?

THE CHAIRMAN: Yes.

MR. SINCLAIR: The record shows, sir, that the British Columbia district was not, when the evidence was given, completely dieselized. That, as a matter of fact, is the testimony.

THE CHAIRMAN:

And those figures of 16.8 and 21.2 were taken off schedules of steam trains?

MR. SINCLAIR: Yes sir, that is steam versus diesel -- schedule versus schedule.

Now, Mr. May who appeared before the Commission in Vancouver said that the times shown in exhibit 115, that is the scheduled times which Mr. Fraine drew from timetable 108, were, as he put it, unrealistic and he attempted to prove this by referring to the next timetable





which was 109 which increased the time of certain trains over the Mountain Subdivision. He admitted in cross-examination, however, that the increased time was the result of four positive inspection points having been added, not necessarily permanently, due to difficulties having been experienced with damage to wheels on freight cars. In any event, it is significant to note that the new time, that is, 109 time-card time, of five hours and 50 minutes which he gave for train 948 (that is at page 2843 of the record of his testimony) would represent 57.9 per cent of the equivalent basic day which may be compared --

THE CHAIRMAN: 54.9?

MR. SINCLAIR: 57.9 which may be compared with train 957 on the Broadview Subdivision in Saskatchewan, on the prairies, which consumes 56.9 per cent of the equivalent basic day.

HON. MR. MARTINEAU: What is the number of the last one?

MR. SINCLAIR: That is on the Broadview Subdivision, 56.9. That is a calculation which has to be made from timetable 109. It is not on the exhibit. It is carried out of timetable 109 and I have taken that time schedule and made a calculation from a similar type of freight train on another subdivision.

THE CHAIRMAN: What was the number of the train on Broadview Subdivision?





MR. SINCLAIR: Train 957.

Now, Mr. May similarly pointed out that Timetable 109 time for train 951 on the Mountain Sub. was six hours and fifteen minutes (that is again at page 8243) and this is still faster than train 952 on the Sherbrooke-Megantic Subdivision in Quebec as can be seen from checking it against that train on exhibit 115.

HON. MR. MARTINEAU: What would be the percentage of that?

MR. SINCLAIR: I have not calculated that. That is six hours and fifteen minutes. I would have to have the mileage and divide by  $12\frac{1}{2}$ . That calculation will be made and I will give it to you in a moment.

Now, that comparison I have just mentioned from timetable 109 train time of 951 was six hours and fifteen minutes referred to by Mr. May as being still faster than 952 on the Sherbrooke-Megantic sub. and that is even taking into account the longer distance of the eastern subdivisions, which, of course, makes the comparison more striking in favour of the submission I am making.

May's evidence on this point is at volume 59, pages 8242-8243 and pages 8261-8263 and the exhibits to make these calculations are exhibits 25 and 115 so far as they are of record. Timetable 109 was not filed.

Now, to support further the information



contained in exhibit 115, exhibit 115-A -- the answer to your question, before I go on to this other point, my lord Mr. Justice Martineau as to what portion of the equivalent basic day train 951 on timetable 109 over the mountain at six hours and fifteen minutes would be is 62.1 per cent.

HON. MR. MARTINEAU: Thank you.

MR. SINCLAIR: In further support, as I say, of information contained in exhibit 115 and 115-A -- no, exhibit 115-A was prepared to support further the information contained in exhibit 115. Exhibit 115-A shows exactly the same trains but translates the scheduled time into average miles per hour and this makes even more readily apparent the similarity of speeds of the slowest and fastest symbol trains over the Mountain and Thompson Subdivisions.

Now, during the cross-examination of Mr. Fraine Mr. Lewis requested that a further comparison be made of the actual average speeds of all freight trains ~~ex~~cluding way freights operating on the same subdivisions as those given in exhibits 115 and 115-A. The requested information was put in the form of a statement and filed as exhibit 115-B. I would respectfully draw your attention to the fact that the average speeds were determined not from timetable schedules but



from train despatcher's sheets which show the length of time the trains were on the road between the initial and final terminals.

This statement, exhibit 115-B, shows that the average speed of all through freight trains on the Mountain Subdivision was 2.1 miles per hour greater than that on the Galt Subdivision in Ontario which, of course, is operated only at standard rates, and only 0.6 miles per hour slower than the Mactier Sub-Division north from Toronto also operated at standard rates.

While the average speed on the Mountain Subdivision was approximately five miles per hour less than on the Thompson Subdivision, it is significant, in my submission, to note that the average speed of 22.6 miles per hour on the Thompson Subdivision is faster than that shown for any of the four subdivisions on the Eastern Region.

Exhibit 115-B.

As I have said, the facts contained in exhibit 115-B were obtained directly from the official train sheets and the comparisons between the various subdivisions are all made over exactly the same period of time -- the month of November, 1956.

THE CHAIRMAN: Is that 115 or 115-B?

MR. SINCLAIR: 115-B.

Now, you will recall during the testimony of Union Witness Hobbs, exhibits 253





through 257 were filed in an attempt to prove that the speeds of trains ~~are~~ slower on the Mountain Subdivision than on the Shuswap and Thompson Subdivisions.

Hobbs, volume 51, pages 7345-7355.

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Now, in my submission, two points of significance emerge from a consideration of the attempt by Mr. Hobbs to use exhibits 253 and 25<sup>4</sup> covering train times in mountain territory for purposes of comparison with train times in valley territory as shown in exhibits 255, 256 and 257.

Now, these two points of significance are: first, the period used for comparative study is not the same. The train times shown in exhibits 253 and 25<sup>4</sup> dealing with mountain territory fall within the period from November 16 to February 3. On the other hand, the trains shown in exhibits 255, 256 and 257 dealing with valley territory made up of the Shuswap and Thompson Subdivisions takes in a considerably longer period, namely November 1 to March 4. Now obviously operating conditions such as the number of trains on the piece of track, the weather and so on affect train times over a subdivision and such conditions can vary substantially if the period is not the same. For comparative purposes the same period is essential in my submission and on this ground alone Mr. Hobbs' exhibits, I respectfully submit, can be given little weight. My second point of significance is this: to make a comparison of the average speeds of a number of trains in one territory with the average speed of a number of trains in another territory, the proportion of fast



to slow trains in each group should be about the same. The proportion of fast symbol to slow extra trains should be about the same.

THE CHAIRMAN: The proportion of what?

MR. SINCLAIR: The proportion of fast or symbol to slow or extra trains in each group should be about the same. There should be a reasonable relationship in each of the groups. Mr. Hobbs' exhibits failed to do this as was shown in the analysis of fast and slow freight trains which are contained in exhibit 261 which I put to him in cross-examination.

Exhibit 261 shows that Mrs. Hobbs' exhibits 253 and 254 making up the Mountain Subdivision group, contain only 43.7 per cent third-class or fast freight trains -- being third-class trains in this territory -- while on the other hand exhibits 255 and 256 on that portion of the valley territory covered by the Shuswap Subdivision contain 62.1 per cent third-class or fast freight trains and exhibit 257 covering the Thompson Subdivision contains 63.9 per cent third-class or fast freight trains. In other words, Mr. Hobbs has more than 20 per cent fast trains in his valley group than there are fast freight trains in his mountain group. I think that this is ~~one~~ place where



a comparison of a percentage with a percentage is sound statistical analysis.

To remove confusion with some other timetables that were dealt with in the evidence on other questions I should properly just mention in passing that for operating reasons fast freights on the Mountain, Shuswap and Thompson Subdivisions are run on ~~third~~ class schedules instead of on second class schedules as is the usual practice on other parts of the system. In the subdivisions I mentioned the fast freights are designated under the <sup>under</sup> ~~third-class~~ schedules where/other designations in other parts of the territory they are run as second class and if you are looking at one type of territory as compared to another and following the timetables you have to remember that. There is no second class schedule set up in these exhibits.

THE CHAIRMAN: That is just to make it difficult for the unwary, I suppose?

MR. SINCLAIR: Well, it can make it difficult if a person is not aware of it, that is right.

Now, in regard to the average speeds of passenger trains, exhibit 258 was dealt with in evidence by Union Witness Hobbs. This exhibit deals only with two trains, No. 1, the Canadian westward, and No. 8, the Dominion, eastward. This exhibit





shows only that train No. 8 is slower on the Mountain Subdivision than on other subdivisions including those in valley territory but it shows clearly that the same cannot be said for train No. 1.

THE CHAIRMAN: Will you just give that to me again? It shows what?

MR. SINCLAIR: It shows that train No. 8 is slower on the Mountain Subdivision than on other subdivisions including valley territory. It is slower on valley territory and it is also slower on other than valley territory.

THE CHAIRMAN: Slower than what?

MR. SINCLAIR: Pardon me, my lord. It is slower on the Mountain Subdivision than it is in Valley territory or on other territory; but the same exhibit, by looking at train No. 1, reverses that situation. The point can be made clear by looking at train No. 1 which is slower on the Thompson subdivision than it is on the Mountain Subdivision just the reverse.

HON. MR. McLAURIN: It is going downhill in the mountain? No. 1 is a westward train.

MR. SINCLAIR: Yes, but I do not think that is the only factor although it may be one factor. As the Commission will recall you have restricted speeds going downhill as well as going uphill.



HON. MR. McLAURIN: And two of the Commissioners will recall that they stayed up all night.

MR. SINCLAIR: I cannot remember that my lord.

I refer the Commission to Hobbs' evidence, volume 51, pages 7355 and 7360. There is an important point to be drawn from exhibit 258, in my submission. I put this to Mr. Hobbs and he would not agree that the fireman on No. 1 on the Thompson Subdivision should receive a higher rate of pay than the fireman on No. 1 on the Mountain Subdivision, notwithstanding the fact that the entire purport of his evidence in dealing with this matter was that the slower speed was the sole justification for the differential rate.

During the cross-examination of Mr. Hobbs, exhibit 262 based on official records of the company was filed showing the average speeds of all transcontinental passenger trains on the Mountain and Valley Subdivisions as well as three subdivisions in Northern Ontario. Carrying out the approach of Mr. Hobbs, the firemen on trains nos. 5 and 6 who are now paid the valley differential on the Shuswap and Cascade Subdivisions should be paid at a lower rate than the firemen on these two trains between MacTier and Cartier.



Indeed, all of the firemen on trains nos. 1 and 2 working anywhere between Field and Vancouver should also be paid at such lower rate.

Hobbs' evidence, volume 52, pages 7385 to 7389.

So much for my analysis of times which is really a statistical approach, as it has to be based on the evidence produced by the Brotherhood and produced by the company. I think the conclusion from the statistical analysis is clear that times did not and do not justify a mountain differential and that the mountain territory is not at a disadvantage in that regard in comparing it with the balance of the system. Now, dealing with snow and mud and rockslides, these do not justify, in my submission, a continued payment of the mountain differential -- or may I put it this way -- they do not justify a continued payment of a differential on mountain territory in excess of the differential in valley territory.

Mr. Hooley gave some evidence on snow conditions on both the north and south main lines throughout the entire mountain and valley territory. He said in evidence that on the Mountain Subdivision there are severe snow conditions while at Penticton where mountain rates also apply there is no snow at all. He also said that between





Spences Bridge and North Bend, in valley territory, the snow can fall to a depth of 36 inches in a very short length of time. His evidence was that on the Mountain Subdivision there is a regularly assigned snow-plow service that works continually between Beavermouth and Revelstoke and the difference between winter and summer operating conditions affects only the trainmen who must on occasion clean switches upon entering sidings.

Mr. Hooley also said that snowslides are not as frequent now as they were 25 years ago due to the controlling effect exerted by the growing vegetation. This latter point was also dealt with by Mr. Smith.

Hooley's evidence, volume 31, pages 4272 to 4285.

Smith's evidence, volume 60, page 8469.

Mr. Shepp, who was the superintendent of the Vancouver Division for a number of years, spoke of snowslides and washouts that have occurred on the Cascade Subdivision in valley territory as well as rockslides on the Thompson subdivision which is again in valley territory. Mr. Hooley said that based on his experience, such conditions as washouts and slides and so on can be just as serious in valley territory as they are in mountain territory.

Shepp's evidence, volume 5, pages 568 and 569.



Hooley's evidence, volume 34, pages 4777 and 4778.

Now, Mr. Knuff who appeared before the Commission at Vancouver made special reference to the territory between Spences Bridge and North Bend, and the difficulty on this section of valley territory. The Commission will recall that it changed its plans for leaving Vancouver so as to be able to observe carefully this section of the railway. Undoubtedly the section of railway from Yale to Spences Bridge is as rugged as any on the Canadian Pacific system. The curvatures are sharp and there are, as Mr. Knuff said, substantial difficulties at times from rocks. This the Commissioners observed for themselves.

The fact that there are locations in valley territory where difficulty is experienced from slides and rocks can be seen from the evidence of Mr. Smith regarding the number of points on the Mountain Subdivision and on the Shuswap, Thompson and Cascade Subdivisions where permanent track patrol forces are employed. The evidence was that there are two points on the Mountain Subdivision, none on the Shuswap subdivision, but five on the Thompson and nine on the Cascade subdivisions where patrol forces are permanently employed. Of course, the Shuswap, Thompson and Cascade Subdivisions are all in valley territory,



as can be seen from exhibit 8-A.

Mr. Knuff's evidence, volume 59, pages 8295 and 8296.

Mr. Smith's evidence, volume 60, pages 8468 and 8469.

Now, I think at this time I should also draw the Commission's attention to the exhibit filed by Mr. Smith -- which is exhibit 332 -- which sets out for each of the six years from 1950 through 1955 the charges under the account for removing snow, ice and sand at each district of the Canadian Pacific Railway. Now, it may be that there are in that account as we gave the full statement of what was included in it some differences from year to year but in my submission the differences <sup>are</sup> / not large and when we have a base as big as six years for comparison I think that that meets any difficulty which can be said to arise from points included in the charges.

Now, these charges were reduced to an average cost per mile and in each of the six years the cost for the Algoma District was higher than for the British Columbia district and in the last few years it was substantially higher. Indeed, in the year 1955, the cost of removing snow in British Columbia was less per mile than in Manitoba. There are a number of similar comparisons which can be made. In British Columbia,





in many years, the cost of snow, ice and sand removal does not present anywhere near the work it presents in Quebec or New Brunswick. This can be seen by examining the comparative costs.

Exhibit 332.

Smith's evidence, volume 60, pages 8470 to 8472 and pages 8533 to 8539.

Mr. Hooley gave evidence of improvements that have been made in mountain territory to reduce the operating problems. These include the installation of block signals, re-routing of the track around known slide locations and the construction of slide detector fences to give advance warning to trains of track obstructions.

Hooley's evidence, volume 31, pages 4289 to 4290.

Now, the improved operating conditions in the territory to which the mountain differential applies in the last fifty years have to be taken into account. There have been a number of track changes. Mr. Smith, for instance, said that in recent years some track changes have been made for divergence around slides; that is, the track has been relocated in the area where slides have occurred and the configuration of the ground brought them down to the track. There have also been major relocations of track





in the territory over these years and the se are set out in exhibit 208. This exhibit also shows the effect on the grades and mileage of these major relocations. The improvement in grades has been very marked. Although the distance actually involved is small nevertheless the reduction in grades has been considerable; for instance, there was a line diversion 8.2 miles long including spiral tunnels between Stephen and Field in the Laggan subdivision which reduced the grade from 4.5 per cent to 2.2 per cent although the mileage was increased in doing that. However, that increase in mileage was offset by the diversion listed immediately following that one relating to the Connaught Tunnel between Stoney Creek and Glacier in the Mountain Subdivision. The dates on which these improvements were made are also set out in exhibit 208.



Smith also dealt with this matter at Volume 60, page 8469.

Witness Hobbs gave evidence of heavy snowfall on the Mountain Subdivision, and in answer to his counsel said that this provided a problem of a danger of slides. He then went on to say, and I quote:

"We are experienced in there and we endeavour to try to keep our speed down at points where we think there might be danger to a train movement."

He went on to speak of other problems, all of which dealt with the passing of signals in snow conditions. This latter point resolves itself into a matter of delay and you will recall that Mr. Smith gave evidence that in Mountain territory, during the time of the year when snow can become a problem, the railway is organized for it and special action is taken in regard to it.

Mr. Smith said that since the advent of the bulldozer particularly the company had had a great deal of success in cleaning snow in the yards and around switches and the company had also purchased tractor-operated snow plows which are used in these locations. He summed it up



by saying, "Conditions are much better today than they were a few years ago both as to slides and generally in yards and walking conditions."

Hobbs, Volume 51, pages 7335-7336.

Smith, Volume 60, page 8469.

Another point is that the introduction of the diesel locomotive has had a significant effect on the wages of firemen in Mountain and Valley territories. In my submission, this is of great significance when dealing with this matter of differentials.

I said earlier in my summation on this point of the Mountain differential that there were other factors, other than changes in the diesel, brakes and so on, which had contributed to the removal of any unfavourable comparisons which may once have existed between that portion of British Columbia where the Mountain differential applies and the remainder where the Valley differential applies.

Mr. May of Revelstoke, the same Mr. May who appeared before the Commission at Vancouver, stated that one of the most important intents of the mountain and valley differentials was to bring the remuneration of crews





working in mountainous territory into parity with those in other areas where train speeds were much higher. He said in his view the mountain differential was to equate the remuneration per hour. May, Volume 59, pages 8241-8268.

The diesel has more than done this for firemen operating on the Mountain Subdivision and has more than offset any disadvantage mountain differential territory had by way of pay per hour as compared with valley territory.

THE CHAIRMAN: The diesel has done that, apart altogether from the mountain differential rate; that is your point?

MR. SINCLAIR: That is my point. As explained by Mr. Gossage, the rates of pay of firemen vary according to the size of the locomotive as measured by weight on drivers, and multiple unit diesel engines weigh considerably more than the steam engine that they replaced because the steam engines could not be operated in multiple from one control.

Gossage, Volume 1, pages 128-129.

Mr. Hooley gave evidence as to how assisting steam engines used to be added to the train for extra power on heavy grades, but unlike the diesel in



multiple each assisting steam engine was manned by an engineman and fireman whose rate of pay was based only on the weight of the one engine on which he was riding.

Hooley, Volume 31, pages 4252-4263.

To demonstrate the effect of multiple unit diesels in mountain territory on the wages of firemen, in both passenger and freight service Mr. Gossage prepared Exhibit 11.

Based on the maximum monthly mileage of 4,800 miles, taking passenger first, this exhibit shows that a passenger fireman on the North Main line on a 5900 or T-1 class steam engine would earn \$577.44 including mountain differential. If we substitute a three-unit diesel we find that the added weight on drivers produces monthly earnings of \$613.92 at mountain differential rates. We also find that at valley differential rates the same fireman on a three-unit diesel would receive \$580.80, approximately \$3 more per month than he would have received on the heaviest steam engine at mountain differential rates.

On the South Main line in passenger service a fireman on a 5100 or P-1 class steam engine at mountain differential



rates would receive \$567.84 monthly, while with a two-unit diesel his earnings would be \$590.40 at mountain differential rates, and \$557.28 at valley differential rates. In other words, his valley differential earnings would be just \$10 less than his earnings on steam at mountain differential rates.

THE CHAIRMAN: I notice in your first illustration dealing with the North Main line you referred to a T-1 steam engine, while on the South Main line you referred to a P-1 steam engine; how do they compare?

MR. SINCLAIR: The T-1 was assigned to the North Main line. It is a heavier and bigger and more powerful locomotive. The P-1, 5100, was assigned for service on the South Main line. It is a lighter engine.

THE CHAIRMAN: The rate for firemen would vary according to the weight of the engine, if it was a steam engine?

MR. SINCLAIR: Yes, and on the diesel also. I am making these comparisons to try to show the results on both the North Main line and the South Main line so that there can be no suggestion that we are trying to load them



in any way. I am trying to cover the whole ground.

In freight service the effect of dieselization on wages has been even more pronounced. On the North Main line, where T-1 class steam engines were normally used, a fireman would receive \$509.20 at mountain differential rates, whereas today on a four-unit diesel at valley differential rates he would receive \$579.88, some \$70 more per month.

On a three-unit diesel his valley differential earnings of \$543.40 would still be higher than the former \$509.20 at the mountain rate, and even on a two-unit diesel, which is rarely operated in through freight service on the Mountain Subdivision, his valley differential earnings would be less than \$2 below his steam earnings at mountain rates.

THE CHAIRMAN: Am I right in understanding that on the South Main line passenger service by either steam or diesel is to disappear, that it will be all rail cars?

MR. SINCLAIR: That is right as far as the regularly assigned service is concerned, but that is not saying that there will not be passenger operations





through there with locomotives. That road is there and it will be open for diverting trains. It can be used to handle extra trains and so on. It is the regular assignments that will be covered by rail cars.

On the South Main line in freight service the same comparison applies. There the earnings available at the steam rate were \$487.16, including mountain differential, whereas a four-unit diesel at valley differential rates would yield earnings of \$579.88, or \$92 a month more to a fireman.

During the cross-examination of Mr. Gossage it was suggested by counsel for the union that diesel freight trains in the mountains might not necessarily be hauled by four units, and that if in fact three units or two units were more frequently used there would be a significant change in the comparison between earnings on steam at mountain rates and on diesels at valley rates. Accordingly in answer to Mr. Lewis' request Exhibit 11A was prepared which shows that in the summer month of July, 1956, there were 187 four-unit trains, 166 three-unit trains, and only 10 two-unit trains. In a winter month, February 1957, there



were 236 four-unit trains, 140 three-unit trains and only 17 two-unit trains. I have already drawn to your attention the fact that a fireman on a three-unit diesel at valley rates does not receive less than he would on a steam engine at mountain rates, but, on the contrary, about \$34 a month more.

Gossage, Volume 2, pages 278-280.

Exhibits 11 and 11A.

During the cross-examination of Mr. May he admitted that speaking roughly a train requiring two units to go over the Shuswap Subdivision would require four units to go over the Mountain Subdivision. He admitted also that this added weight on drivers increased the pay of the engineman and the fireman. I then asked him:

"Q. And in that way there is some additional remuneration given?

A. There is a slight remuneration, yes."

May, Volume 59, pages 8265-8266.

An examination of Exhibits 11 and 11A will demonstrate it is certainly an understatement to say that the addition to the earnings caused by



the added weight on drivers through multiple unit diesels is slight. It is much more than that, it is substantial.

The Commission will remember from its observations that there are certain sections of mountain territory which are not nearly as rugged as sections of valley territory. This is true on both the main line and on the south line.

I mentioned earlier the rugged valley territory between Yale and Spences Bridge on the main line. Another example would be around the Kootenay Lakes, say from Nelson east to Sirdow, a distance of about 58 miles, on the South Main line, which is valley territory. The section from Yale to Spences Bridge is also valley territory.

There are small stretches in the mountain territory where there is good open running for some distances. For example, on the main line from Golden to Donald there is a stretch of 16-odd miles. On the South Main line there is some good, open, flat running, even though it is covered by the mountain differential. There is flat open territory east from Grand Forks for some 12 to 15 miles, and that is under mountain differential rates.

To summarize the matter of





mountain differential, in my submission the evidence supports the company's position that the mountain differential should be modified. The Canadian Pacific proposal for the establishment of a uniform differential rate throughout the entire British Columbia area at the present valley rate is one that is eminently fair to the firemen, in my submission.

I submit that there has been no evidence to show that firemen in mountain territory are faced with a more arduous task than their fellow employees elsewhere in British Columbia, or indeed than firemen on the Algoma District in Northern Ontario.

Limitations which were at one time imposed on average speeds of trains by the heavy mountain grades have been largely removed by the diesel and there is evidence that some trains in both mountain and valley territory make better time than on the prairies or in the east.

Snow, rock and mud conditions are no worse in the mountain territory than in the valley territory, and such hazards as they may present to train operations have been largely overcome by automatic signals, track relocations,



slide detector fences, track patrol men and modern snow-fighting equipment.

Finally, the increased earnings resulting from the heavier weight on drivers of multiple unit diesels will still leave the fireman in mountain territory with generally higher earnings than he could receive in other parts of the country or that he would have enjoyed in mountain territory if the steam engine had not been replaced by the diesel.

I respectfully submit in the light of the evidence and the observations made by the Commission that the answer to that part of the third question dealing with mountain differentials should be that the provisions of the present agreement between Canadian Pacific and the Brotherhood of Locomotive Firemen and Enginemen governing the Prairie and Pacific Regions should be modified so as to make the present valley differential applicable also on the mountain differential territory.

That is all I have, sir.

THE CHAIRMAN: Thank you,  
Mr. Sinclair.

Then, I understand by arrangement, we will adjourn until Monday at 10.30.

---At 11.50 a.m. the Commission adjourned  
until 10.30 a.m., Monday, November 4, 1957.



**ROYAL COMMISSION ON EMPLOYMENT OF FIREMEN  
ON DIESEL LOCOMOTIVES IN FREIGHT AND YARD  
SERVICE ON THE CANADIAN PACIFIC RAILWAY**

**67**

**PROCEEDINGS**

DATE: Nov. 4, 1957

PLACE: Ottawa, Ont.

PAGES: 9356 - 9491

VOLUME: 67

E. L. FEATHERSTON  
SHORTHAND REPORTER  
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November 4, 1957

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ROYAL COMMISSION ON EMPLOYMENT OF  
FIREMEN ON DIESEL LOCOMOTIVES IN  
FREIGHT AND YARD SERVICE ON THE  
CANADIAN PACIFIC RAILWAY

Proceedings of public  
hearing held at Ottawa,  
Ontario, Monday,  
November 4, 1957.

PRESENT:

Hon. R. L. Kellock,	Chairman
Hon. C. C. McLaurin,	Member
Hon. Jean Martineau,	Member
Douglas M. Fraser,	Secretary
A. R. Winship,	Asst. Secretary

APPEARANCES:

C. J. A. Hughes, Q.C.,	Representing the Commission
I. D. Sinclair,	Representing the Canadian Pacific Railway Company
David Lewis,	Representing the Brotherhood of Locomotive Firemen and Enginemen

Monday,  
November 4, 1957.

67th DAY

MORNING SESSION

---The Commission resumed at 10.30 a.m.



MR. LEWIS: Mr. Chairman and members of the Commission, I will of course deal with Question No. 1, as to whether firemen-helpers are required on diesel locomotives in freight and yard service on the Canadian Pacific first. I have given some anxious consideration to the question of how best I can be of assistance to the Commission at this stage. I propose with your approval, and I hope with the approval of the other members of the Commission, to make some general submissions which the Brotherhood respectfully requests that the Commission take into consideration as it analyzes the evidence and prepares its report.

I do not intend to follow my learned friend in any detailed analysis of the evidence, as this has become particularly unnecessary in view of the very exhaustive and if I may say so very able analysis, with all the relevant references, which he has put on the record. Neither do I intend, in view of the approach which I have taken, to deal separately with yard and freight service. I shall mention each in turn on one or other of the subject matters, but I will deal with the entire question together.

Now, as perhaps a preliminary

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observation which the Brotherhood respectfully wishes the Commission to take into account is that the report which it will prepare will be relevant, not only for the Canadian Pacific and the firemen on this railway but also for other Canadian railways as well as railways in the United States. Mr. Gonder, one of the vice-presidents of the Canadian National, gave evidence before this Commission which is reported in Volumes 29 and 30. He made it very clear in his evidence and in his attitude to the problem, I should say, that that was the case. Mr. Borntrager of the New York Central of the United States in an exchange with myself during cross-examination, made it equally clear that his railway considered this a common cause, that the issue which the Canadian Pacific has raised was of importance to railways in the United States. He agreed with me that what happens here may well set the pattern for the United States railways.

Borntrager, Volume 7, pages  
784-785.

With great respect, Mr. Chairman, the Brotherhood wishes to emphasize that the responsibility on the Commission, which is already great, is increased by this fact of the very widespread influence which this



report will necessarily have. It also places a very heavy responsibility on this very small portion of the entire Brotherhood of Locomotive Firemen and Enginemen.

Now, I want to deal with the question of lookout. A very great deal of time was spent by both parties -- I am as responsible as anyone else -- on the question of lookout, on the amount of time which the fireman spent on the deck or in his firing duties in the days of steam. The Brotherhood submits that the evidence has clearly established that the firemen always had a duty of lookout, although it is also obvious, and I do not for one moment deny that this duty of lookout by the fireman was shared with some or all of the other employees on the train.

A number of exhibits, Exhibit 137, Exhibit 197, Exhibit 209, Exhibit 212, Exhibit 218 and Exhibit 219 showed discipline forms which indicate that firemen have been disciplined for failure to look out or for failure in some other respect connected with lookout. In cross-examination of many company witnesses I placed on the record extracts from letters and other documents from company officials to firemen with regard to failures, in all of which the duty of lookout was stressed and emphasized.



The evidence also shows that the same was true in the United States in steam days. Through Witness Wade of the Milwaukee Railroad Rule 932, apparently of the rules of the Milwaukee road, was read into the record. Members of the Commission will no doubt recall that the rules were rules not only for the Milwaukee but they governed also seven other United States railways. They were revised in 1945 the evidence showed, but Witness Wade testified that this rule, namely Rule 932, had been in the rules since he started with the railway in 1923.

Without reading this rule fully, it requires the fireman to keep a lookout and places on the fireman the obligation of observing signal indications and the obligation of reminding the engineman with regard to train orders and the like. This rule of course governed the firemen in the days of steam as well as in the days of the diesel. It was put on the record and I refer to it now as confirmation of the position of the Brotherhood throughout that in steam days a lookout was a function and an important function performed and required to be performed by the fireman on the engine.

Engineers who testified on behalf of the Brotherhood and those who came to





present briefs to the Commission invariably stressed their traditional and habitual reliance on the fireman for lookout on the left side of the engine, both in yard and on the road.

The Brotherhood therefore submits that the evidence clearly establishes that the fireman always had the duty of lookout, and in that is of course comprised the duty to watch for signal indications and the rest connected with lookout functions. That duty was required by the railroad and was relied upon by the engineer.

I say quickly at this stage that the Brotherhood realizes that this does not answer the question. However, as I have already said, the evidence establishes that this duty was shared with the ground crew in the yard and with other members of the train crew on the road. The question which still remains to be answered is of course whether or not other employees can maintain an adequate lookout without the fireman, and to this I will return later.

There was another matter in connection with which a great deal of time was spent in evidence, and that is the question of signal passing, the fireman being used as one of the signal passers. If I may just by the way I should like to suggest that the





expression used by company witnesses and in many of the documents filed as exhibits "giving signals direct to the engineman" is in my respectful submission a misleading expression. It is meaningful only if there is just the one person giving the signal direct to the engineman. But the moment there is a relay of signals from one to another to a third to the engineman, then of course it is not a direct signal to the engineman at all.

The Brotherhood respectfully submits that if the giving of signals on the right side of the engine through relays is direct to the engineman, it is equally direct if it is given on the left side with the fireman as one of the relays.

The Brotherhood also submits that the evidence clearly establishes that the passing of signals to the fireman has through the years been the practice followed by yard and train crews.

May I point out that the earliest date of any company bulletin suggesting a preference for signals to the engineman is the bulletin issued by Mr. Alver, filed as Exhibit 76. That is dated August 16, 1956. He followed this mild bulletin, which is how he characterized it, with others which were somewhat stronger as he progressed. The



others were all issued in the present year.

Exhibit 77, January 17, 1957.

Exhibit 78, January 31, 1957.

Exhibit 79, February 21, 1957.

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THE CHAIRMAN: Would you refresh my memory on the date when the conciliation board began its hearings?

MR. LEWIS: It began in June, 1956, Mr. Chairman. My friend tells me it was June 28. It continued, I may say, through the early fall in 1956.

THE CHAIRMAN: I suppose there was some period between the breakdown of negotiations and the commencement of the sittings of the board.

MR. LEWIS: There was, sir. There were some months intervened. I think it was in April that the negotiations ended and the board started its sittings at the end of June and I think completed its sittings in October of 1956, if my memory serves me right -- in November, 1956.

THE CHAIRMAN: Thank you.

MR. LEWIS: An even more significant date, Mr. Chairman, is the date of exhibit 273, which was filed during our sittings in Toronto and concerning which I have made a note that it was systemwide, as I agreed last week when my learned friend was dealing with it. It is a systemwide bulletin with regard to the giving of signals to the engineman or on the engineman's side, and that was dated June 18, 1957.

THE CHAIRMAN: It is June 7 on the





copy put before me.

MR. LEWIS: Pardon?

THE CHAIRMAN: June 7, 1957.

MR. LEWIS: Well, it may be my error, Mr. Chairman. Now, that bulletin, if I read it correctly, deals with yards and signal passing in yard service.

Then, as late as September 5, 1957, there was a bulletin, now exhibit 331, which requires signals on the engineman's side or to the engineman in road switching as well as in yard switching.

Brotherhood Witness Wade, to whom I have referred, also read into the record during his evidence rule 923 of the same rules to which I have referred, which required that firemen as well as enginemen must be ready to receive signals. That is Wade, volume 49, page 7026.

Witness Flanagan from the New York Central read into the record, or I read into the record during his evidence, <sup>operating</sup> rules from the New York Central to the same effect, both as to lookout and signal passing. You will find that, sir, in volume 44, pages 6248 and 6249.

The Brotherhood respectfully submits that it is inconceivable that, if the practice of giving signals through the fireman were really as hazardous and undesirable as company witnesses attempted to make out or if it were hazardous or undesirable to any extent at all,



the company would have ignored and, indeed, condoned the practice throughout many decades until October of last year. It must, therefore, in the Brotherhood's submission be concluded that the practice was accepted as a normal one and as unobjectionable until one year ago.

Of course, Mr. Chairman, I made clear throughout the proceedings, as I admitted in a number of memoranda which have been filed as exhibits, that giving the signals to the engineer rather than through the fireman would obviously be the normal practice. If I wanted to talk to my learned friend I would not do so through somebody else unless there was a reason for it. In the same way, if the ground crew in the yard or the trainmen on the road have to transmit a signal to the engineer they would transmit it to him normally rather than through the fireman unless there was some reason for it.

THE CHAIRMAN: I think a number of your witnesses frankly stated that was the normal and preferable practice.

MR. LEWIS: The normal and preferable practice. I quite agree. Again, Mr. Chairman, I appreciate and the Brotherhood appreciates that the fact that there was a practice on occasion of giving signals through the fireman does not answer the question before this Commission because the question remains whether

35; 1

it is possible to organize the signal passing without the helper. I have agreed on advice of my advisors, as we travelled across Canada, that in all instances it is physically possible to so organize or arrange the position of the men concerned as to give the signals to the engineer without the helper, and particularly is this possible, of course, with the aid of radio and dual control.

However, in the submission of the Brotherhood, again this does not meet the whole problem because, as I shall say again later, it would still leave in switching in the yards and in switching en route on the road one side of the engine, namely, the left side, and in the case of dual control at times the right side, without any eyes on the engine to watch that side.

The next general point I should like to deal with, Mr. Chairman, is the question of mechanical assistance. We had a great deal of evidence on that, and connected with mechanical assistance was, of course, the question of inspection and patrolling. Again the Brotherhood wishes me to draw to the Commission's attention the relevant dates which, in its submission, are of significance.

It is obvious from the evidence, Mr. Chairman and members of the Commission, that from 1949, February 1949, when road switchers first came into operation on the C.P.R. until





October, 1956, helpers patrolled, inspected and assisted the engineman mechanically as a regular thing, not only without objection but in accordance with the forms issued by the railway, now exhibits 129 and 129-A.

MR. SINCLAIR: You said "road switchers". Did you mean that?

MR. LEWIS: Did I say "road switchers"? I am sorry. I meant road diesels. I beg your pardon. I have "road diesels" written in my notes. I don't know why I said "road switchers". February, 1949, was when road diesels came into operation.

The Brotherhood also submits that that patrolling and inspection were carried on by helpers not only in accordance with the forms, exhibits 129 and 129-A, but in accordance with what they were taught in the mechanical examinations which they had to study and to write, now exhibits 147 and 269. The Brotherhood further submits that those of them who had access to manuals issued by the manufacturers found instructions in those manuals advising that inspection before a trip was started and inspection en route were desirable to assist in the operation of the engine. You will find those quoted in the evidence of Mr. Doull, volume 36, pages 5004 and 5005, and volume 36, pages 5049 and 5050.

Now, Mr. Woodland agreed in cross-



The first part of the paper discusses the importance of maintaining accurate records of all transactions. It is essential for the business to have a clear and concise record of all income and expenses. This will allow the business to track its financial performance over time and identify areas for improvement. The second part of the paper discusses the importance of maintaining accurate records of all assets and liabilities. This will allow the business to track its net worth over time and identify areas for improvement. The third part of the paper discusses the importance of maintaining accurate records of all debts and obligations. This will allow the business to track its financial obligations over time and identify areas for improvement. The fourth part of the paper discusses the importance of maintaining accurate records of all taxes and other legal obligations. This will allow the business to track its financial obligations over time and identify areas for improvement. The fifth part of the paper discusses the importance of maintaining accurate records of all other financial information. This will allow the business to track its financial performance over time and identify areas for improvement.

examination that no oral or written instructions had been issued to stop patrolling or inspection before the bulletin of October, 1956, which is in pages 6 and 10 of exhibit 7. That, as a matter of fact, Mr. Chairman, does not directly prohibit patrolling or inspection but it sets out what it wants the firemen to do and not to do and thereby definitely set a limit.

Now, company witness O'Brien filed two bulletins issued in Smith Falls prohibiting what is called in those bulletins tampering or making adjustments to protective devices and prohibiting the entering of electric cabinets and doing certain other things specified in them, but the first of those bulletins was issued on October 2, 1956, and the other on the same point, only a little wider, on February 5, 1957. Those bulletins, Mr. Chairman, are exhibits 140 and 141.

Again, the bulletin which was system-wide and which prohibited opening the doors of road switchers in motion and prohibiting passing between road switchers in motion "which are not equipped with walkways", was not issued before May 2, 1957. This you will find in the evidence of Mr. Emerson, volume 32, pages 4439 and 4440. I go back, by the way, Mr. Chairman and point out that even this bulletin prohibits passing between road switchers in motion only when the road switchers are not equipped with walkways. That qualification still remains



there.

The CHAIRMAN: With respect to walkways I think Mr. Sinclair said that one is designed for passenger and the other for freight service. Perhaps you have it more clearly in your mind.

MR. LEWIS: The walkway is for passenger and without the walkway for freight. Although it is not in my notes, I have it in mind that I intended to say that the evidence is that the road switchers that have been and are recently and are now ordered do not usually have walkways.

The Brotherhood could not but be struck, nor I personally, Mr. Chairman, by the following very strange fact from the evidence. On April 16, 1957, this year, Mr. Gonder, a vice-president of the C.N.R., gave evidence here in which he said emphatically that inspection and patrolling were unnecessary. On June 11 during the hearings Mr. Hone, who had until a few weeks earlier been an employee of the C.N.R. and was on leave of absence as one of the Brotherhood's general chairmen, gave certain evidence, and during his evidence he filed a bulletin issued in Ottawa by the divisional master mechanic here which was dated April 18, 1957, two days after Mr. Gonder had given his evidence, and that bulletin stated:



"Firemen must realize that frequent inspection may avert serious delay and possible damage by timely observation of some small defect which might be easily corrected if noted early."

THE CHAIRMAN: Is that the Canadian National?

MR. LEWIS: The Canadian National. You will find this in the evidence of Hone, volume 52, page 7513, and the bulletin is exhibit 264.

During his evidence Mr. Hone also filed exhibit 263, and that exhibit was dated as recently as August 10, 1956. It is a very lengthy exhibit consisting of nine pages, three sets of three pages each, which gives engine crews instructions on -- and I quote the heading -- "Common diesel failures, causes and remedies". This was issued, of course, by the Canadian National Railways. The bulletins deal with all road and road switching units and for all the makes that I have heard mentioned during our proceedings, namely, Fairbanks-Morse, General Motors and Alcos. This you will find in the evidence of Mr. Hone, volume 52, page 7521.







Now the Brotherhood appreciates, Mr. Chairman, that the company, that is, the Canadian Pacific Railway, has throughout stressed in bulletins to which I have already referred that it does not want some or any of these things done, inspections or patrolling, and the fact that the Canadian National Railway still wants it, or still wanted it, is of course offset by that. The Commission will of course have before it to decide whether the Canadian Pacific has satisfied it that the railway can be operated safely without such assistance as set out in Exhibit 129, Exhibit 129-A, Exhibits 263 and 264 and the mechanical examinations which have now been withdrawn and which were Exhibits 147 and 269, as I have already said.

THE CHAIRMAN: You mentioned those before, didn't you?

MR. LEWIS: Yes, I did.

THE CHAIRMAN: You gave the Exhibit numbers?

MR. LEWIS: I did, sir.

To turn for a moment to another item which was discussed at some length, particularly during evidence of Brotherhood witnesses both in direct evidence and in cross-examination, that was the question of emergencies which occur, not every day of course, but they do occur on the railroad, such as the breaking in two of a train and the like, and assistance given by the diesel helper or fireman in such situations.



Canadian Pacific witnesses informed the Commission that it is possible to organize things in emergencies without firemen -- to get the necessary things done -- and if that should cause some delay then it is not of any consequence because the emergencies are not delay occurrences.

Now one of the arrangements often urged on the Commission was that in the case of emergency the conductor could get in touch with the dispatcher and obtain rearend protection for his train, thus eliminating the need for flagging and, therefore, having the rearend trainman available for any work that needed to be done.

The Brotherhood wishes, Mr. Chairman, to comment on this particular suggestion. Rule 99 of Exhibit 22, second paragraph of that rule on page 55, Mr. Chairman -- it is the first full paragraph on page 55 -- reads thus:

"When a train stops in circumstances in which it may be overtaken by another train, the flagman must go back immediately with flagman's signals a sufficient distance to ensure full protection."

Similarly, the paragraph at the bottom of page 55 reads:



"When a train stops in circumstances in which it may be overtaken by another train, the engineman will immediately signal the fireman to protect the rear. When ready to proceed he will recall the flagman."

And the paragraph in the same rule at the top of 57 provides:

"The front of a train must be protected in the same manner when necessary."

The Brotherhood, of course, quickly acknowledges the fact that frontend protection is a much less frequent requirement than rear-end protection.

The word to which I wish to call the attention of the Commission, with respect, is the word "immediately". In that rule the moment an emergency occurs and there is a likelihood of a train in the rear being too close -- immediately the emergency occurs and the train stops the fireman must go immediately to flag. He cannot wait around until the conductor has got in touch with the dispatcher. The conductor gets in touch with the dispatcher after the fireman has already set out on his flagging duties. After the conductor has obtained rearend protection then, of course, the flagman can be whistled back, but whatever time would have been involved in running out and



back has passed by.

THE CHAIRMAN: In that case you don't rely on the literal words at the foot of page 56 which, in speaking of the engineer, say:

"When ready to proceed he will recall the flagman."

You don't say the flagman has got to stay out there notwithstanding that rear-end protection has been obtained by contact with the dispatcher?

Mr. LEWIS: I am afraid I could not take that position.

THE CHAIRMAN: Your point is that there would be some delay because under the rule as it stands the flagman must go out at once, and then whatever time it takes to communicate with the dispatcher and get him back is something else?

MR. LEWIS: That is right, sir.

Certainly, on the same point, one cannot always be certain of obtaining rear-end protection in this way as the description given of these things by Mr. Fraine, not in any particular place but throughout the evidence, makes clear, because it would depend upon there being an operator on duty or a telephone available, and it would also depend on the train following the train in an emergency being sufficiently far behind to make such protection possible.





I now come, Mr. Chairman, to perhaps one of the more important points which the Brotherhood brought to the attention of the Commission during the proceedings, and that is the incidents -- the many incidents -- related to the Commission by various witnesses -- numerous witnesses -- which alleged that the firemen averted by accidents by warning the engineer of things that were round or near the train -- things or persons.

My learned friend dealt at great length with this subject and analysed each one of the incidents separately. May I first point out to the Commission the significant fact that the incidents which were related by those whom I called as witnesses for that specific purpose, that is the individual firemen who appeared in Ottawa, Toronto, Winnipeg, Calgary and Vancouver and who dealt with incidents individually, that these incidents all occurred in the present year, in 1957. There was no attempt made by those witnesses, as my friend suggested once or twice during his argument, to go back into the records. I limited them to those incidents which were relatively recent and about which they could speak with some feeling of security as to their memory of them. It was not my intention, Mr. Chairman, as you correctly guessed the other day, to argue from the facts of each incident and, indeed, I would have been



surprised -- I say this quite frankly -- if the witnesses whom I called had not in some cases misapprehended the situation which they saw. We have all had experience as to the weakness of human observation, and I have no doubt that some of the incidents which were related to the Commission occurred in some slightly different way from that which the person relating them honestly thought they had occurred, but in my respectful submission the details of these incidents are not of any consequence.

The purpose of bringing that evidence before the Commission was precisely as you, Mr. Chairman, stated at page 8827 of Volume 62 during my learned friend's argument. The purpose of that evidence was to prove to the Commission that incidents, some more serious and some less serious, some involving only property and some concerning human life, some involving trespassers and some concerning railway employees, some in which children are saved and some in which adults, both drunk and sober, are concerned, some involving persons who could see and hear and some persons who could not see or who could not hear -- that incidents of all sorts are averted by railway employees, not only firemen but all railway employees and that these things are not infrequent or rare occurrences but are a regular part, a



regular experience in railway operations.

Now as far as the firemen or helpers are concerned, the purpose of that evidence was to show that the firemen or helpers have contributed their share to averting these kinds of accidents and, furthermore, the Brotherhood submits that <sup>in</sup> an attempt to persuade this Commission that the firemen were able to play their part in the averting of such accidents precisely because they were located on the left side of the engine at the time when the engineer was on the other side.

The Brotherhood recognizes, of course, that if one of the yardmen in the yard or one of the trainmen on a road train was always on or at the engine in a position to see the left side as well as the right side, and to see ahead on the left as well as on the right it might well be that such accidents -- all of them -- might have been averted by the said persons -- yardmen or trainmen. But the Brotherhood respectfully submits that yardmen and trainmen have other duties -- duties which take their attention and their concentration; that they are human, not infallible; that accidents occur precisely because human beings frequently fail to do what they should do and do what they should not do -- they fail to see what they should be looking for. Accidents occur, that is,





accidents other than acts of God, precisely because someone fails in his judgment or his duty or fails to observe a rule. There may be, Mr. Chairman, a legal defense for anyone -- the railway or someone else -- if an attempt is made to hold somebody responsible in circumstances where a person who was hurt was himself guilty of some violation of rule or duty. The Brotherhood cannot in these proceedings be concerned with that.

The Brotherhood submits that the fact is that accidents occur precisely because someone may fail in his duty or lookout or care or observation, and therefore respectfully submits to the Commission that the only foolproof solution in so far as any human solution can be foolproof to the overriding need of the safety of the public and of railway employees is to have an employee -- a fireman or helper -- on the left side of the engine whose particular duty it is to be responsible for lookout precisely for such affairs on his side.



The Brotherhood fully adopts the statements made by almost all of the engineers, yard foremen, conductors and trainmen who presented briefs to this Commission, and it will be enough for the purpose of this summation to quote only from two. I quote, Mr. Chairman, from Mr. H. L. May who presented a brief to this Commission in Vancouver, and in volume 59, at pages 8247 to 8249 Mr. May stated:

" Engineers without exception insisted that a sharp and continuous lookout be kept by the fireman while the curvature was to the left when passing through yard and station limits. This is a matter that is clear and vivid in the memory of us all, and we feel that we would be remiss in our duty unless your Commission fully understands and knows that the lookout on the left side was always considered as one of the most important functions of the fireman."

A little later on, at page 8248, Mr. May says:

" Ability to see and immediately to recognize a hazard as such is the paramount factor in this issue. In safe railway operation all other matters must be subordinate to this

The first part of the paper  
 is devoted to the study of the  
 properties of the function  
 which is defined by the  
 integral

$$f(x) = \int_0^x \frac{1}{1+t^2} dt$$

It is shown that this function  
 is increasing and concave  
 down. The maximum value of  
 the function is found to be  
 equal to  $\frac{\pi}{4}$ . The minimum  
 value of the function is found  
 to be equal to 0. The function  
 is also shown to be continuous  
 and differentiable. The

II

The second part of the paper  
 is devoted to the study of the  
 properties of the function  
 which is defined by the  
 integral

$$g(x) = \int_0^x \frac{1}{1+t^4} dt$$

It is shown that this function  
 is increasing and concave  
 down. The maximum value of  
 the function is found to be  
 equal to  $\frac{\pi}{4\sqrt{2}}$ . The minimum  
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 to be equal to 0. The function  
 is also shown to be continuous  
 and differentiable. The

"end. The fireman has been always placed in the cabby practice and by law at a vantage point to cover the left side of the engine parallel to the engineer on the right as far as lookout is concerned.

To the outsider it might appear that there is no threat to the safety of passenger train operation because the carriers are not requesting the removal of helpers from passenger locomotives. However, past experience dictates that the safety of a passenger train is not only in the hands of the passenger crew, but also in the hands of the crews who are on opposing or following freight trains. Nothing should be taken away now that would in any way reduce this safety factor."

Now, Mr. Herbert Howell, an engineer who presented a brief to this Commission in Toronto on June 19, 1957, states this at volume 55, page 7793:

" The engineers for whom I am speaking feel also that the removal of helpers from diesel engines is fraught with danger to the general public and will add abnormal strain and unreasonable responsibility on



"engineers who now carry a responsibility that is already heavy and exacting."

THE CHAIRMAN: At that point I would like to have your view on this, Mr. Lewis. Suppose an employer comes to the conclusion -- any employer -- that a particular class of employee is of no further use to him from the standpoint of carrying on his business. I am not careful about choosing my language, but he comes to a conclusion of that kind and he says to them: "I do not need you any more; I do not want to renew my former labour contract with you", and they, through their representatives, say, "Well, we do not agree with that and if you do not enter into a contract to continue to employ us we will go out on strike." Now, such a strike would be totally ineffective just by itself because the employees would be apparently vacating the service that the employer says he does not need, and that would put no pressure on the employer. You apply that here, and the only way that the strike became effective, I suppose -- I am not sure of the facts of the case -- was that other classes of employees, perhaps the enginemen and the yardmen and the train crew said, "Well, we will support the firemen and we will go out on strike if you do not agree with the firemen", and then that thus brought about a stoppage. Am I right so far?

MR. LEWIS: Yes, I understand the facts





of the strike were that the railway did not attempt to operate probably because they knew that the other Brotherhoods would not cross any picket line set up by this one, so that, I think in essence, your statement would be correct.

THE CHAIRMAN: Well, then, in this case while we have had numerous individuals, engineers and trainmen, express their views in speaking on behalf of their fellow engineers, and trainmen and yardmen at various places, neither the enginemen's union, the Brotherhood, nor the trainmen, nor the yardmen's union came here to say on behalf of their unions that there was any objection in safety or otherwise to the removal of the firemen. Am I right in that fact?

MR. LEWIS: Yes, subject, Mr. Chairman, to the fact, which my learned friend anxiously put on the record, that the heads of the two Brotherhoods, the Brotherhood of Engineers and the Brotherhood of Trainmen, requested their people to assist in this inquiry.

THE CHAIRMAN: Quite so, but they did not come and I was wondering whether you had any comment on that.

MR. LEWIS: No, they did not come as speaking for the organizations as such.

THE CHAIRMAN: The organizations as such did not make any representations.

MR. LEWIS: No, and it is not on the



record, Mr. Chairman, as to who -- let me put it in the form of a supposition. I suppose that the organizations as such felt that the kind of inquiry this Commission was conducting, in other words, seeking the facts and the experiences of employees, that it was much better for their local people, those who wished voluntarily to do so, to give their experiences to the Commission than for the organizations to presume now to declare what organizational policies were. I suppose that was the conclusion. Whether or not they will do so at some stage, whether or not they will at some stage declare their organizational policies, or rather the policies of their organizations, is something I am not in a position to say, of course.

THE CHAIRMAN: Oh, no.

MR. LEWIS: I would suggest that that is perhaps the reason why it was done in that way.

THE CHAIRMAN: Yes; all right, thank you.

MR. LEWIS: I want to deal for a very brief moment, Mr. Chairman, with two particular matters connected with the problem of safety with which my learned friend dealt in his argument as illustrative of the divergences in approach. My learned friend dealt at some length with the question of the problem of infant trespassers, and in volume 62, starting at page 8856 of his argument, if



you will permit me to quote very briefly,  
he says this at the bottom of page 8856:

" It is my submission on the matter of infant trespassers what the company can do is to warn them when it meets them, turn them away when it meets them and conduct campaigns in the school on safety and the dangers of being on railway property. This the company has done, as was explained by Mr. Emerson in evidence.

In my respectful submission the responsibility for keeping infant trespassers off railway property is basically the responsibility of the parents. Certainly a fireman is not required to act as a guardian of infant trespassers on the few occasions that parents fail or that the safety programs of the company and others are not successful. I refer to the safety programs conducted by the Canadian Pacific in schools and by those who worry about children."

You, Mr. Chairman, then asked Mr. Sinclair in effect whether he thought there was an obligation on the railway to conduct those safety programs, and Mr. Sinclair, on page 8858, said:



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" There is no obligation on them, in my respectfully submission".

Now, Mr. Chairman, the Brotherhood gladly acknowledges what the Canadian Pacific has done in the field of safety education; but it respectfully submits that no one can ignore the fact that children are attracted by engines and trains; that adults too often fail to take the necessary care and that even railway employees may become so absorbed as to place themselves in dangers. All these possibilities, in the submission of the Brotherhood, have been demonstrated to this Commission as realities that occur from time to time. Again the Brotherhood concludes that the fact these things happen, and particularly that children are attracted to engines and railways, makes necessary eyes on the left side of the engine in yards and on the road. Similarly the Brotherhood would like to draw your lordships' attention to evidence and my learned friend's remarks with regard to highway crossings at grade. He analyzes the evidence starting at the first page of volume 64. In that volume at page 9048, he analyzes the evidence on this point with, I may say, the care and the accuracy that one has learned to expect from him with a view to establishing, to use his words in summarizing the evidence of Mr. Fraine at pages 9048 and 9049, with a view to establishing that by the time the headend crew of a train concludes



that a car approaching a crossing is not going to stop it is too late for the engineman to take any effective action to slow down or stop the train. He said:

" Based on this information, Mr. Fraine expressed the view that by the time the headend crew of a train concludes that a car approaching a crossing is not going to stop it is too late for the engineman to take any effective action to slow down or stop the train. The amount by which a train can be slowed down will not generally be sufficient to reduce the damage done by the impact, having in mind the relative weights of the engine and the train and cars and the automobiles."

Then, at the top of page 90<sup>4</sup><sub>9</sub> my learned friend, still summarizing the evidence says:

" Mr. Fraine's opinion was that the most that a member of the headend crew of a train can do is to make sure that the bell is rung and the whistle is blown, but if this does not cause a car approaching the crossing to stop, the application of the brakes is not likely to be of much help."



Now, the Brotherhood respectfully wishes me to submit to the Commission that all that my learned friend says in that summary may well be true, and yet he does not end the matter by any means. It is, of course, true, and as my learned friend pointed out, the Brotherhood's Witness Lancaster agreed with him, as did, I think, Mr. May, of whom he asked questions on the same subject when he presented his brief, but there are circumstances, if the train is very fast, and so on, where little or nothing can in fact be done; but some of the instances related to this Commission, Mr. Chairman, show, I respectfully submit, that common sense would conclude, even without any specific evidence, that there are instances when the engineman can do something to avoid a collision, or at least to lessen the consequences on property and to human life, should a collision occur, when the train is going at a slow rate of speed, as it frequently does when approaching a public crossing. Public crossings are usually located at the entrance to little villages and by stations and so on. I should not say "usually"; I should have said are frequently located in these places. Now, it may be it is in such instances that the engineer can do something about averting a collision or lessening the impact of the collision. It may be that such instances may not constitute a substantial



proportion of highway crossing affairs,  
to use the word we have become accustomed  
to; but whatever the number, in the Brother-  
hood's submission, it is more than worthwhile  
to make every attempt to avoid collisions and  
to lessen the consequences when collisions  
do occur.





May I put it this way. The relative infrequency of a situation where a collision may be averted by the engineer of a train or when the consequences of a collision may be reduced; the relative infrequency of such a situation may be of great importance in the field of statistics, ratios and proportions, but to the individual whose life has been saved or whose possible injuries have been lessened a statistic is of no consequence at all. To him the action which has saved his life or lessened his injuries is the only relevant factor. The Brotherhood wishes to make a brief comment about one other point which has been in some controversy in the evidence throughout these proceedings, namely whether it is safe or hazardous to work from on top of cars. The Brotherhood respectfully submits that there really is no room for controversy. It is of course admitted and the evidence clearly establishes, the evidence of Brotherhood witnesses as well as company witnesses, that working high, as it has been called, working from the tops of cars is a regular part of the yardman's and trainman's work; that it is done frequently. No one denies that.

The Brotherhood respectfully submits that the Commission should accept



the evidence of yard foremen and conductors on this matter. All of them without exception emphasized that even though they recognize that working from on top of cars was a necessary part of the trainman's or yardman's functions, they did not regard going high as a safe practice. They recognized that it was a hazard, more particularly in winter weather and in wet weather generally. In this connection I would refer to Bell, Volume 39, pages 5532-5534.

McKinstry, Volume 42, pages 5892-5893.

White, Volume 58, pages 8124-8125.

What those and other witnesses said, and what the Brotherhood respectfully submits to this Commission, is that working from the tops of cars, particularly in winter and in wet weather, should be kept to the minimum. To the extent that the removal of the fireman from the diesel would necessitate yardmen and trainmen going high more often, to that extent the hazard to the yardmen and the trainmen would be increased, and in the Brotherhood's submission that should not be done.

THE CHAIRMAN: That is really the same point. Should not it be the yardmen



and the train crew who take that position, rather than the firemen?

MR. LEWIS: Well, Mr. Chairman, perhaps that is one of the difficulties of the case which is before this Commission. It may not be the fault of the railway, it may not be the fault of the Brotherhood --

THE CHAIRMAN: I am not speaking of it being anybody's fault at all.

MR. LEWIS: I appreciate that. What I am about to say may not be the fault -- I was not referring to your comment -- of either party, but one of the difficulties of this inquiry and of the case before the Commission is that the issue has not been placed in the context of consideration by the entire crew, on the one side, and the railway, on the other, as to the personnel of the train crew, and in the train crew I include the engine crew, and how the work of one affects the work of the other and the impact of one on the other.

It has not been placed in that context, but because of the circumstances of separate collective agreements this Commission is concerned and can only be concerned in one sense with the position of the members of this Brotherhood. That gives me an opportunity to say something which I intended to say later and which





fits in more logically here in view of your question.

One of the things that have concerned the Brotherhood throughout, and that the evidence has attempted to imply, is precisely that if the helper is removed from the diesel some of the functions which the fireman performed previously, either alone or as a joint responsibility with others, would now have to be performed exclusively by the head-end trainman. I appreciate and the Brotherhood appreciates that that kind of jurisdictional consideration is not relevant to the inquiry which this Commission has conducted in carrying out the duty placed upon it by the Governor in Council, but it certainly is a consideration that concerns my client very greatly. Because this inquiry necessarily deals with firemen, as it were, in isolation instead of with the crew as a whole, and the relative value of one as against another in a given set of circumstances, the duty fell on us to deal with these matters, such as climbing on top of cars, rather than on anyone else.

My learned friend referred, with understandable pride, to the experience of the company witnesses who appeared before the Commission. I should like to put on



record that the Brotherhood witnesses, excluding the young firemen who were led before you to give you the details of incidents; in other words, witnesses who dealt with the general operations as engineers and as conductors -- all but two in Ottawa, and two of them in Toronto -- the witnesses whom I called averaged a service with the Canadian Pacific, a length of service with the Canadian Pacific of over 27 years. Some of them had a service of considerably more than 27 years, while some of the youngsters, like Mr. Post, had less than 20 years or less than 15 years, if my memory serves me aright. Mr. Sheflin was also in that category.

An average of over 27 years of service with this company, either as firemen or as engineers or as trainmen or conductors-- the record will show that most of them have a very good record with the company -- I am sure my learned friend will agree that all of them gave their evidence with a sincere and genuine urge to place before this Commission the truth as they saw it and understood it.

I should like also to place on record that the engineers and conductors who came to present briefs to this Commission,



the few of them who gave their service records -- only six or seven did, but those six or seven whose service records are in the transcript show an experience of well over 30 years on the average with this company. The Brotherhood therefore submits that while it would not for one moment attempt to belittle the value of the experience of the company's witnesses, any one of them, with perhaps one or two from other lands, the evidence of Brotherhood witnesses and of those who have presented briefs to this Commission should be given weight and consideration by this Commission.

My learned friend, if I may interject at this point where perhaps it logically falls, suggested to this Commission the other day that when looking through the briefs the Commission should bear in mind the circumstances under which those briefs were presented. By his reference to Exhibit 275 and to the evidence of Mr. Walters -- I am sorry I have not a note of the page reference he gave at that time -- obviously meant to convey to the Commission that there was something that lessened the value of the presentations made by these gentlemen because they had made them following an understanding between the officers of my client and the





officers of those organizations and a request by the head officers of the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen to their local people to give such assistance as they could.

I respectfully submit, and I make this submission on my own because I took part in it, that, as you stated in Toronto during our hearings, there is absolutely nothing wrong or sinister about the fact that three brotherhoods, all interested in this matter, should have consulted with one another and that the two other brotherhoods should have decided to give assistance to this Brotherhood in the presentation of facts to this Commission. The men who came before you to present briefs did so entirely voluntarily. They were people who obviously had a sense of loyalty to the railway as well as to their fellow firemen and to their fellow employees. Whatever weight the Commission may give to their presentations on other grounds, my learned friend's suggestion that the way in which they appeared, as it were, affected the weight of their evidence is clearly invalid.

Now my learned friend also thought that our witnesses and those who presented briefs had not had any experience in





operating without a fireman or a diesel helper, and that if they had had such experience they might have concluded otherwise than the conclusions which they expressed to this Commission.

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Of course I cannot say anything about that but the Brotherhood suggests to the Commission, Mr. Chairman, that most of the company witnesses had not had any direct experience with working without a fireman on diesels either. In fact, the difficulty arose obviously because that experience had not been had on the C.P.R. to any great extent.

In saying that, Mr. Chairman, I have not forgotten and I am not unmindful and the Brotherhood has not forgotten and is not unmindful of the C.P.R. experience with two yard switchers under 90,000 pounds working without a fireman even now, nor of its experience with the R.D.C. or Budd cars in passenger service working with an engineer alone, nor of the experience around Galt with electrical engines, nor of the Aroostook Railroad in the United States nor of the under 90,000-pound engines on the C.N.R. in Newfoundland and at Kamloops.

Recognizing as it does, Mr. Chairman, the weight of this kind of experience, the Brotherhood merely suggests that this experience is on the periphery of railroading and that they are necessarily small and inconsequential operations with the exception, of course, of the R.D.C. cars which are becoming an increasingly important part of



passenger service. The others, in our submission, are on the periphery of freight railroading.

In connection with the evidence with regard to the Quebec and North Shore Railway, Mr. Chairman, all I can do is to suggest to the Commission certain factors in the Quebec-North Shore experience which do not obtain on the C.P.R. and respectfully request that the Commission keep those factors in mind, as of course it will, when weighing the relevance of that example.

Mr. Bybee, who gave evidence on this point, informed the Commission that on the 300-odd miles of his railway there is no settlement on the whole of the railway other than section camps, that there is only one public crossing near the southern end of the railway, that the main operations of the railway are carried on for only about six months in the year from May to the middle of November, that from the middle of November to May there are only about half a dozen trains a week, regular freight and passenger service, going up and down that railway, that the railway has continuous automatic central traffic control and that, except for a few switching points, the train crew never turns a switch.

The Commission will recall that





Mr. Bybee informed you during his evidence, I think in cross-examination, that the yard work at Seven Islands at the south and at Silver in the north is done by employees of the Iron Ore Company, not by employees of the Quebec North Shore Railway.

He informed the Commission that the ore cars on the Quebec North Shore Railway are all new equipment and all with roller bearings so that there is almost never any problem with hot boxes. He added, in answer to a question I asked him, that they did, however, have trouble with draw bars and an occasional break-in-two.

In this connection the Brotherhood respectfully requests the Commission to bear in mind that here is a relatively short railway performing basically one function, that of transporting ore, that it is situated in a wilderness with practically no settlements from one end to the other and that it presents, therefore, none of the problems which the yard operations and road operations of the C.P.R. involve and which the employees of the C.P.R. both in road and yard meet. The evidence of Mr. Bybee, Mr. Chairman, is in Volume 27, and the particular points that I have



referred to can be found in the pages running from page 3702 to 3729.

I was going on to say, Mr. Chairman, that I am frank to admit that the evidence on and our experiences in Europe and our observations in Europe present a much more serious obstacle to the submissions of the Brotherhood in the realm of actual experience with engines on which drivers alone function. It is impossible to deny that that evidence was significant.

But the Brotherhood respectfully submits that European working conditions in general are and always have been different in many respects from working conditions on this continent. The attitude of employees to employers and vice versa in Europe has always been different from that obtaining in North America and over the centuries, we might even say, Mr. Chairman, European employees have tolerated some things which employees on this continent have not.

I am not to be understood to say by those words that the people of Europe do not manage to live as happy, as fulfilling and as useful lives as we do on this continent. I have lived in Europe too long, particularly in Britain, not to appreciate their accomplishments.



But the differences in working conditions have always been striking.

Perhaps my learned friend will not object to my saying that it is possible, for example, to take judicial notice of the fact that there is a tremendous argument now in Britain, as the press tells us, about the request of some British unions for a reduction of the work week to 40 hours from 44 and 48, and in France there was recently quite a fuss about a reduction of the work week to 44 hours. On this continent, of course, the 40-hour week has been accepted for some years as the norm.

All these differences in working conditions and approach, Mr. Chairman, the Brotherhood submits must be kept in mind as to the kind of thing which the employees of the railways we had the pleasure of visiting in Europe might do and accept and the kind of thing which the employees of the C.P.R. in Canada should be expected to do or accept.

One also noticed, Mr. Chairman and members of the Commission, some other differences which the Brotherhood draws to the Commission's attention for whatever weight the Commission may give to them. In Switzerland, for example, we witnessed that they had throughout automatic train





control in addition to the deadman control, not only a foot pedal but a deadman control always at least by hand as well as by foot, as it were, on one side, and we saw some on both sides of the engine. Therefore the engineer is not stuck to his foot pedal at the controls. He is able to get off that position and with the time lag of five seconds, I think it was, go over to one side or the other of the engine and by pressing down a button there have the deadman control. But that was in addition to the automatic train control.

One could not but be struck in all the countries we visited in Europe, particularly Switzerland and Holland, by the short distances between stations, just two or three miles. Every two or three miles there was a station. In Canada, of course, the distances between stations are very much greater.

One could not but be struck by the shorter and lighter freight trains in Europe, the smaller and lighter freight cars. The only cars I recall seeing which had a size relative to the size of cars on the C.P.R. were some flat cars. I am talking about freight cars now, not passenger cars.

It was noticeable to me,





Mr. Chairman, and of course the members of the Commission will have drawn their own conclusions, that the only yards which appeared to be as busy as the yards, some of the larger yards, we visited in Canada were those in England, St. Pancras and Nottingham. On the continent I was not impressed by the business of any of the yards we visited, not even that at Rotterdam. The work seemed to be a great deal more leisurely than what we observed in the C.P.R. yards.

THE CHAIRMAN: Did you say St. Pancras and Nottingham.

MR. LEWIS: And Nottingham in Britain. The members of the Commission will no doubt recall that we were informed that most, if not all, of the freight trains on the continent of Europe -- I could not find in my notes that we had been told the same thing about Britain and therefore I am not going to say it with regard to Britain although I have a feeling that it is true of Britain -- travel at night because of the congestion of the tracks with passenger trains during the daytime.

What that obviously means in yard operations, Mr. Chairman, is that the yard people have <sup>the</sup> day for uninterrupted marshalling of cars and of trains. You



do not have the problem of one train arriving and having to be split up and marshalled for another train to pull out within a certain specified amount of time. Another difference of some consequence --

THE CHAIRMAN: I should like to follow that. If you assume that most of the freight movement is at night in Europe, then it means that the whole job has to be done at night, does it not, the marshalling and everything else?

MR. LEWIS: No, sir. As I understood it, the marshalling was done during the day. The trains were got ready by the yard crews during the day.

THE CHAIRMAN: Well, if a train moves over the road at night it must be received the same night at its destination or in the daytime.

MR. LEWIS: I appreciate now what you mean, Mr. Chairman. Perhaps I should have said that trains which do local switching on the continent also travel during the day for that purpose. I have no doubt, therefore, that some freight trains function during the day, but I have a clear memory and a clear note of the information in Switzerland, and Holland, France in particular that the congestion of the tracks with passenger



traffic during the day made it so that their freight trains mostly travelled at night, and if they arrived at their destination the engine was cut off, the cars remained there and they were marshalled or rearranged the following day ready for the trains to take them away the following night. My memory may be at fault, Mr. Chairman, but I do not recall on any of our visits in these yards seeing any goods trains, as they call them, arrive or anybody saying "a goods train has just arrived" or "is about to arrive."

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THE CHAIRMAN: We were not on the job early enough.

MR. LEWIS: Maybe. We certainly saw a good many passenger trains. My learned friend is quite right in emphasizing -- and I must admit it is a pretty relevant point -- that the passenger traffic congestion on the European tracks is very striking and, of course, it adds to the general difficulty of operation for freight as well as passenger. I am not suggesting that passenger trains do not run at night. They certainly do. One could not fail to observe, when one stood in a station for fifteen minutes one would invariably see four or five trains pass through in those fifteen minutes, but standing in a yard or a station --

THE CHAIRMAN: All I had in mind is this: assuming the movement over the road of the freight train is at night. If it takes the whole night, surely the freight train does not at its point of destination remain there to be loaded or marshalled all day, and have that all done the next night?

MR. LEWIS: I will say this, Mr. Chairman -- perhaps I am drawing conclusions from very few facts -- even when the marshalling is done at night, that is represents -- the point I am making with all diffidence -- and I have to put it in general terms with some accuracy at least --



THE CHAIRMAN: That is the point.

MR. LEWIS: Most of the yard work -- the overwhelming part of the yard work -- is done without interruption and the pressures of goods trains arriving and departing at the same time as the yard work is being done. That is really the point I am trying to make and that was my impression.

Now in yard work there is a distinction which the Brotherhood wishes to draw to the attention of the Commission. Members of the Commission will remember that the International President of the Brotherhood accompanied us on this trip and he and I compared notes. Now in many of the yards, particularly in Switzerland, France and Italy the yard crew was attached not to an engine as here, on the Canadian Pacific, but to a specific location in the yard. That of course means that you can have only one engine working in that location since, when that yard crew was through with a particular job which the engine was working on within the area of its responsibility or location, and only then could some other work take place within that same area since they were attached to that area and not to any engine.

Then also, Mr. Chairman, in France as we were informed by Mr. Coster and Mr. Imhoff and Mr. Emerson and as was drawn to your observation station personnel in switching



enroute took part in the switching; but they do not need a full train crew for the switching because the station people participate in it and indeed, Mr. Chairman, as far as the switching crew was concerned in many instances we saw quite a sizeable crew; in some instances there was only one man doing the work, as my friend pointed out the other day in his argument, but in others there were three and four men doing the work and in most cases from my notes and my memory the switchers were controlled by a man in the tower. Sometimes the tower was on the ground but I am calling it a control tower though it might have been a hut on the ground or a tower higher up, and from the point of view of switching operations the controller of the switches -- the person in the hut or in the tower -- is an additional member of the crew.

I appreciate of course that there are situation on the Canadian Pacific, of course, particularly in hump operations which are similar but my observation if it was not at fault was that it was very much more frequent over there. Almost the common practice was for the switchers to be controlled from a tower or from a hut, though, of course, there was some hand switch throwing as well.

Now I have just drawn to your attention at the wish of the Brotherhood





these differences in European operation and experience which in our respectful submission should be taken into account. But what struck me most about our European experience is what is contained in Exhibit 180-A with regard to the training of engineers, or enginemen as the Canadian Pacific documents name them.

In Exhibit 180-A some reference is contained to safety. Exhibit 180 concerns the manning of engines and trains in the four countries concerned and it also contains the story of the training given to the people who are to become engineers.

Now in Britain the experience has not been very great at all; it is the same as the Canadian Pacific or a little less. As a matter of fact, as Members of the Commission will recall, their introduction of diesel is a very recent occurrence and they were still in negotiation with the unions and, therefore, the training there is not relevant to the point I wish to draw to the attention of the Commission. The same is, on the whole, true in the case of France as indeed it would be the case with the Canadian Pacific tomorrow, though I must add that they have a pool of firemen from steam to draw upon, as, of course, the Canadian Pacific has now.

But I should like to draw the





attention of the Commission to the Netherlands training a description of which begins toward the bottom of page 4 of Exhibit 180-A and with your permission, because it is so fully summarized, I did not see how I could summarize it more and retain any accuracy, I should like to draw this to your attention, Mr. Chairman, and Members of the Commission.

The first part is the preliminary training required -- primary school and trade school. Paragraph L-D --and this is the point -- specifies practical experience in industry as a mechanic, electrician, motor mechanic or on a similar job for at least one year. I stop here to draw the attention of the Commission to the emphasis which is placed on the mechanical experience of the person who wishes to become an engineer. Then you have a section dealing with the training of drivers for shunting locomotives just for yard work, and the total period of training required is at least two years of which one and a half years are to be spent in a repair and/or maintenance shop and half a year as second man on a shunting locomotive. During these two years thirty days of classroom training is given covering organization and history of the railway, rolling stock, and various matters dealing with mechanics and safety which are set out at the bottom of page 4.

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At the top of page 5, the list includes basic instruction of electrotechnics and diesel engines and diesel-electric shunting locomotives. After two years the trainee has to pass a theoretical and practical examination. If he passes he obtains a qualification as a driver of shunting locomotives.

You will notice, sir, that the training of the drivers for mainline locomotives and multiple unit trains, details of which are given on page 5 in the paragraphs which follow is entirely separate from the training given the shunting drivers except for the preliminary training required. Then again, after he has obtain the qualification mentioned in paragraph 2, that is, after these first two years he must have practical experience during an additional -- these are my words -- an additional three years as a driver of a shunting locomotive. He gets two years training to become the driver of a shunting locomotive and then before he can become an aspirant for road service he must have at least three years' experience as a driver of a shunting locomotive. You have a total of five years there, and during the last three years his previous training is completed by classroom training for three weeks on diesel electric locomotives and multiple unit trains -- construction, schematic diagrams and so on -- and two



months as a second man on a main line and/or multiple unit train to obtain experience in the handling of this type of rolling stock. After this, again an examination has to be passed which qualifies the man as an all-purpose diesel driver. Of course, his knowledge of regulations and signals is periodically tested, as it is in the case of the Canadian Pacific.

The training on the Swiss Federal Railways is set out on pages 6 and 7 of Exhibit 180-A. There is a separate system of training for the stationmen who operate the small locomotives, as we saw in one of the Swiss stations. There is very little training for that -- twelve days' instruction under a qualified driver during one year's service in ordinary station work, and a day in the shop. He writes an examination and for 150 days after that he is confined or restricted to operating the small locomotive as a driver within the station yard. During those 150 days he receives additional mechanical instruction. Then there is another examination and if he becomes qualified he may operate this small yard locomotive over the road beyond the limits of the station yard.

Now the yard engineman falls into a separate group from that of the road engineman, and he first must spend





one year in railway service in any capacity, then 150 days of service on maintenance of locomotives including two days of theoretical instruction; then 12 days as second helper on road locomotives. He then writes an examination. If successful he must spend 75 days as a helper when he again writes an examination to qualify him as a yard engineman. If successful in this examination he must spend 30 days as a second engineman in the yard. He then receives a practical examination and if he is successful he is qualified as a yard engineman although still classified as a helper. After 300 days of additional experience and a further examination he may be promoted and hold a permanent assignment as a yard engineman if such assignment is available. The entire period after the preliminary one year in railway service to qualify as a yard engineman is between two and three years.

The requirements in the case of a road engineman are very much stiffer. He has to have four years apprenticeship training in a craft, and when he completes his apprenticeship training, the aspirant must have one year practising his craft, as you **note**, sir, not necessarily with the railway. He is then given an examination covering intelligence and reflexes.

I got awfully worried about ever



having to apply for a job on the Swiss railways, particularly when I read this document in German. It sounded most impressive.



If he is successful in this test of some sort, he spends one year working on locomotive maintenance in the shops, including nine days of theoretical instruction and twelve days as a second helper on road locomotives. He then receives his first helper's examination -- that is, after this one year -- after which, if he is successful, he can run as a helper; but before he is fully qualified as a helper, he must complete one year working on train and brake rules. If I may summarize, after that number of years then as a helper, he is given a second examination, described as "stiff" in the regulations which my friend and I tried to summarize, and if he passes that examination successfully he is a fully qualified helper.

Now, during the period of running as a fully qualified helper which must be for one year, he receives some days of instruction from a road foreman of engines in requirements of an engineman, including knowledge of the road. He then writes his first examination as an engineman. If successful, he must then spend 30 days as a second engineman, then he must pass a practical test on various kinds of trains. He is then qualified as an engineman and can run as such if work is available.

After 300 day's work as an engineman, he must write the second engineman's examination and, if successful, he is then



promoted to the engineman classification and runs all types of power as work is available.

If my addition is not incorrect, the time involved in that is at least five years of training before he becomes a fully qualified engineman.

My reason for going into some detail in that, Mr. Chairman, is to show that there again is a difference from the experience in Switzerland and in Holland from what has been proposed by company witnesses as to the training of engineers when and if helpers should be removed from the diesel engines.

Now, may I attempt to summarize, Mr. Chairman?

THE CHAIRMAN: Mr. Lewis, what use do you make of this last point? You point out the differences, but what use do you make of the point?

MR. LEWIS: The Brotherhood respectfully submits -- I will bring it in here; perhaps it is more logical here -- the Brotherhood respectfully submits that the pool of passenger firemen ~~for~~ yard and freight engineers does not appear to be sufficient now and will grow smaller as the R.D.C. operations are increased, as Mr. Emerson admitted it was contemplated, and as you pointed out the other day, Mr. Chairman, to Mr. Sinclair during argument, was happening on the south main line in British Columbia and part of Alberta; that with the small pool of





passenger firemen that will eventually become available as service engineers in yard and freight, the training proposed by company witnesses is, in the submission of this Brotherhood, inadequate -- 1,000 miles to 2,500 miles is what the evidence is, I think, of Mr. O'Brien and Mr. Hooley. My learned friend gave you the reference the other day. I did not take it down again. That is what they say as to what would be required. I have not the reference, but I will obtain it; but Mr. Doull and others on behalf of the Brotherhood gave evidence to the effect that in passenger firing one does not obtain the kind of experience which is indispensable to successful running of an engine in freight. The passenger train, as members of the Commission will recall, has priority on the road. It has not the problem of meets and getting out of the way; it has not the problem of the switching, train orders and so on to the same extent that the freight train has. Mr. Doull and Mr. Hobbs, I think it was, and others were emphatic from their experience that you do not learn anything in passenger firing that can be of the same value in the training for a freight engineer. The present progress, of course, Mr. Chairman, is generally from yard to freight to passenger rather than from passenger to freight, as will have to be the case in the proposal of the C.P.R.



Now, Mr. Chairman, the Brotherhood fully recognizes, I am sure, every officer of it, what my learned friend Mr. Sinclair said the other day, and I am giving this from memory, that it is inconceivable to him that the company could not find some training method that would meet the situation. I must admit that that sounds logical enough; certainly it cannot be an insuperable problem; but, Mr. Chairman, the way the subject matter was placed before this Commission was that this pool of passenger firemen with experience only in passenger operations would be the pool for the yard and freight engineers, and that all that was required would be two or three days running under supervision in a yard engine; one to three months running under supervision on the road or over a period of one to three months and from a 1,000 to 2,500 miles, and that was all that would be necessary. My client wishes to emphasize to this Commission on the evidence of Mr. Doull, Hobbs and other engineers with experience that the plan as presented here would not be adequate and would lead to unsafe operation of freight trains. I quickly add I hate to sound sillier than I can be without effort, I quickly add that obviously my learned friend must be right, that it should be possible to find some kind of training plan to meet whatever situation



may develop after the years which the Canadian Pacific proposes to complete its proposal, should this Commission and the Brotherhood agree with them.

THE CHAIRMAN: The reason I asked you how you put this point was that I had a little difficulty in seeing the relevance of this fact that you undoubtedly point out, the difference between the training of enginemen in France and the Netherlands, and let us assume that they have found the minimum requirements to train enginemen. What we are talking about here is whether a fireman is needed on a diesel engine or not. If you adopt that as a minimum for the qualifications of an engineman it leads not to putting a fireman or keeping a fireman but to the laying down of what you describe as some adequate training course. Is that not right?

MR. LEWIS: Yes, certainly, Mr. Chairman, and if there had not been so much stress laid on particular suggestions of company witnesses --

THE CHAIRMAN: That this was a simple matter?

MR. LEWIS: That training would not have been as heavy; to the practiced and experienced engineer on a freight train some of the suggestions appear to be rather wild, if not insulting to his experience.

That training, Mr. Chairman, is also





relevant to another point in another way, and that is to the mechanical assistance which may be required on a diesel engine. I respectfully submit, and we will deal with that in a moment, as I have pretty nearly reached my summary and conclusions, but perhaps I can use the remaining two or three minutes of this morning's sitting to point out that surely if the Swiss and Dutch railways, who have had a long experience with electric and diesel engines, were in agreement with the Canadian Pacific witnesses here that engine crews need not do anything at all on the road, on the engines, all of that would be shop staff responsibility, and so on, if anything happens you get hold of a maintenance man, and so forth, if that had been their experience, the experience had been that engine crews need not be concerned very much about technical and mechanical aspects of their motive power, then those railways would not have taken the pains which 180 (a) shows they in fact took to train their engine crew very fully in the mechanical and technical aspects of the engine. Surely it must not be given to engineers just for the fun of giving it to them, it must be, in my respectful submission, that the Swiss and Netherlands railways have found there was value in the engine crew knowing as much as is possible about the technical and mechanical aspects of the engines which they



drive in order to be able to deal with emergencies and with failures and with difficulties on the road.

THE CHAIRMAN: That is the engineer?

MR. LEWIS: In their case the engineer. In our case, Mr. Chairman, as I will submit in summary, that function has in the past been performed until it was proscribed by bulletins beginning in October, 1956, has in the past been performed by the helper and he can continue to perform what the Brotherhood submits is a useful function.

I come to the final head of this part of my argument.

THE CHAIRMAN: This will be a convenient place to adjourn.

--- The Commission adjourned at 12.30  
to meet again at 2.00 o'clock.

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November 4, 1957.

AFTERNOON SESSION

---The Commission resumed at 2.00 p.m.

MR. LEWIS: Mr. Chairman, when we adjourned at lunch I had come to a rather -- I didn't say this -- longish summary of the submissions before you, but before doing that it might be better if I dealt with one small point.

My learned friend in his argument asked the Commission -- I am sorry I have not the reference -- that if it should come to the conclusion that the diesel helper should be removed from yard and freight diesel engines the Commission should make clear that within the term "freight" it intends to include mixed trains. Mr. Chairman, my comment on his suggestion is a very brief one.

With the greatest respect, I submit that this Commission has not that authority. The order in council asks the Commission to decide whether the fireman-helper is required on diesel locomotives in freight and yard service on the Canadian Pacific Railway. There was no evidence or discussion during the evidence as to the point of whether mixed



trains are to be included in freight or passenger. There was some evidence as to what a mixed train is, but there was no evidence on the point as to whether it should be in one or the other.

My respectful submission is that the order in council limits it to freight service and that any recommendation the Commission may make should be limited -- I hope I may say this without overstepping the limits of propriety -- of yard and freight service. I submit that that is a big enough subject matter for this inquiry to deal with without going into an adjacent area about which, to put it at its lowest, there is certainly some doubt.

The first point I would make in summary on behalf of the Brotherhood is that it is impossible to get a correct perspective of the submission which the Brotherhood has sought to make to this Commission by taking each one of the functions which the fireman has performed or may perform separately and deal with each one by itself, to conclude that in that case he is not necessary or in the other case he is not necessary. It is the submission of the Brotherhood that all the functions





which the fireman has in the past performed, and those functions which the fireman has performed in diesel power until now and could perform must be looked at as a whole, as a totality, in order to answer the question whether he is required on the diesel locomotive.

I thought it might be of some little assistance even at the cost of repetition to suggest that the following are the functions which the fireman has through the years in fact performed and to indicate which of them he performed alone and which of them he performed in conjunction with the other employees on the train.

First, and of course the witnesses for the Brotherhood admitted this, the primary function which a fireman performed in steam was to produce power. That function was his alone. That function of course disappears on the diesel where the power is produced automatically and electrically by the engine itself in the various aspects which have been described, the details of which are not relevant to my submission.

Secondly, the fireman always had the duty which was written into the



agreements in the past and is still in the present agreement in Article 22, with which I shall deal later in the case of arbitraries, of assisting the engineman in inspecting locomotives before setting out on the job. This inspection is more elaborate and more thorough for obvious reasons in the case of a road engine than it is in the case of a yard engine.

This function was the fireman's alone, that is the function of assisting the engineer in making an inspection. Of course the function of inspection was also the engineer's as well as the fireman's, but the function of assisting the engineer was his alone. No other member of the train crew, using train crew as being inclusive of engine crew as well, was concerned with assisting the engineer in inspections.

This function the company has sought to reduce or to eliminate, which I suppose it has authority to do if it wishes under the collective agreement and in the general master and servant relationship under our common law procedures. As I say, this function the company has sought to reduce or to eliminate by the series of bulletins to which I referred, beginning



with the one that forms pages 6 and 7 of Exhibit 7, issued in October, 1956.

The third function which the fireman has performed through the years is to assist the engineman in a mechanical sense on the road, in the case of any trouble with the engine with which the engineer and the fireman were qualified to deal. The fireman had the duty to assist the engineer in making such mechanical repairs. That function was the fireman's alone; it was not shared with any member of the crew on the train and the engine.

That obligation again the company has sought to reduce or eliminate by a series of bulletins issued in the last number of months and to which I have already made reference.

The fourth function which the fireman performed and was expected to perform was to replace the engineer in case of need. Mr. Chairman, I have not yet referred to Exhibits 109, 109A and 109B dealing with seizures and blackouts because I would not want to do it twice.

I deliberately use the word "need." I said to replace the engineer in case of need rather than using the word "emergency."





In the respectful submission of the Brotherhood, it is not merely the kind of situation where an engineer keels over as a result of a seizure or blackout that is really under consideration under this point, it is when the engineer for any reason whatever, being a human being, requires to be replaced for a minute or two, whether it is because of a serious breakdown like a seizure or blackout or because of a milder illness which incapacitates him temporarily, or because he requires to go somewhere as a result of nature, or because he just is fagged out.

As members of the Commission will recall, in yard service he has to run eight hours, and on the road whatever time is spent on the subdivision which he has to cover. That may be under eight hours if he has no difficulty on the road, and it may be over eight hours if he has some difficulty or some emergency arises.

In the yard he has only 20 minutes for lunch. That is the only break in the eight hours. On the road whatever break is given him is when there is any switching that may be done. As company witnesses emphasized time and



again in dealing with various matters, the faster trains other than way freights do very little switching, relatively little switching on the road. Mr. Sinclair gave you the proportions based on the evidence and on the exhibits during his argument.

There is no law in Canada specifying the number of hours or limiting the number of hours that a train engineer may or may not work. There is a rule of the company which has been brought to the attention of the Commission that the engineer, and indeed the fireman too, is supposed to book "rest" after, if my memory serves me aright, twelve hours' service. You will recall that that is something he puts on the book when he books out. There is a column in that which says he has had a rest since his last twelve hours' service.

MR. SINCLAIR: That is not in the evidence, that last bit.

MR. LEWIS: If he is not, I apologize for using it. I am pretty certain I put it in in cross-examination, dealing with the book in Toronto. I think I asked Mr. Oliver that.

MR. SINCLAIR: You are thinking of booking for yard and freight.



MR. LEWIS: I am sorry, I meant that he could book "rest" after twelve hours' service, whether it was on yard or road. By all means, that is the case. What I am saying is that if because of desire or because of greed on the part of an employee he does not book "rest" you have that added to the question of his function to continue running the engine.

The respectful submission of the Brotherhood is that it is wrong to think of the fireman replacing the engineer for a while, short or long, only in terms of dire emergency when the engineer actually becomes incapacitated in the very serious sense. It may be necessary for safety that there be someone on the engine at the controls in lesser circumstances, as I have indicated. That function was the fireman's alone because he was and he still is now the only person qualified on the engine, supposing he has passed his necessary mechanical examinations and his A Book on the road, and I think the B Book in the yard. I am not sure what the evidence is on that, but assuming he is qualified as an engineer he is the only person on the engine





capable of replacing the engineer. That function was his alone.

I come now to a series of functions which could be summarized in one of a number of ways, functions that he shared with other members of the crew. The most important of these is the function of lookout. The Commission will recall that Mr. Fraine at the bottom of page 2228, Volume 17, began a discussion which took him over quite a number of pages as to what lookout on the road really involved.

He made it clear that it is not a matter of looking out as you would from a car where you look in all directions all the time. As he said, a lookout on the road on a train involves looking out at specific points for specific things. I hope I am summarizing that accurately. He said you would look out for signal indications, block signals and other signal indications; that you have to look out at junction points, at stations, at highway crossings and that sort of thing along the road, that it was not a matter of constantly keeping a lookout every moment of the run. As he said, it is a case of being available for lookout and looking out at the points at which through experience and under the rules a watch is





particularly necessary.

That description by Mr. Fraine fits in precisely with the evidence given by many of the Brotherhood witnesses as to the fact that even when they were firemen on steam engines they made it their business to look out at such points whenever it was humanly possible.

This function of lookout the fireman shared on freight trains with the head-end trainman while the engine was in motion over the road. Members of the Commission no doubt will recall that when a freight train is doing any switching en route, during that period of switching the head-end trainman will not be on the left side of the engine, he will be participating in the switching work.

Then there is the function which the fireman has traditionally performed of being in the relay of signal passing when the train crew or the yard crew thought it was more expedient or more convenient or more safe, whichever was their attitude, to pass signals on the fireman's side rather than on the engineer's side. That function of course is shared with the yard or train crew who can, as I have already admitted, so position themselves or with the aid of technical apparatus pass signals



on the engineer's side, whether he is on the right or left in the case of dual controls.

Then the fireman performed the traditional function of watching train orders and time cards and the duty of reminding the engineer with regard to train orders and time cards and meets and the like. That function of course the fireman shared with other members of the crew, both on the engine and on the train.

Then he has always had the function as a member of the crew to assist in emergency as required by the rules. Members of the Commission will recall having had their attention drawn to Rule L on page 4 of Exhibit 27 which states:

"Employees must always be vigilant to protect, and must promptly report anything detrimental to the Company's interest, and in case of danger to the Company's property must unite to protect it."

That and other rules and the general obligation as a member of the crew placed upon the fireman the function of assisting in an emergency, and this was described in some detail by witnesses like Sanders, Hobbs and others.



This function, of course, he shared with the other members and finally the overriding function of participating in the observation of the operating rules whenever and wherever any one, or any of the rules, applied. That, of course, is a duty on every railway employee, not only those on the train but even those on the ground if they are around at the time.

Now, as I said, one can summarize those in many ways. You have in the summary that I have respectfully suggested the four first functions which the firemen traditionally performed which were his alone, one of which, the production of power, has disappeared on the diesel, and the other five functions which I have outlined, which the firemen share with some or all of the members of the crew on the engine and on the train.

Now, the respectful position of the Brotherhood, Mr. Chairman and members of the Commission, is that the fireman can continue to perform all the functions except the first, the production of power, and in doing so he can make a useful contribution to the operation of the railway primarily and above all in the field of safety. That, Mr. Chairman, is the cardinal submission of the Brotherhood; that safety of operations to the public, to railway employees, other than those on the train or engine, and to railway employees on the train





or engine, require that there be at all times in the submission of the Brotherhood a man assigned to the side of the engine opposite to that of the engineer, and that he be there to look out and to give any and every assistance that the operations may require and as they may require it. In fact, Mr. Chairman and members of the Commission, the Brotherhood would like to impress on the members of the Commission just what it considers a useful and historical development. In hand-fired steam engines, the fireman performed his functions relating to safety as best he could, but his performance of lookout and participating in other matters connected with safety was necessarily limited, as Brotherhood witnesses admitted, by his primary function of producing power. When the hand-fired engine became a stoker coal engine, then the time and the attention which he could give to matters of safety increased, and as progress was made from the stoker to oil the time and attention which he could give to matters of safety increased still further. And with the advent of the diesel he can give most of his time and attention to matters concerning the safety of the public, railway employees, railway property as well as public property, or rather the property of the public. The Brotherhood respectfully submits that this development should not be thrown away; that because the fireman is no longer able to perform



the function of producing power his experienced assistance in maintaining the safety record of the railway at its present high level, or bringing it to a higher level, his assistance in that field, should be made use of in the future and can be made use of to a greater and more effective extent precisely because of the characteristics of the diesel.

The Brotherhood also respectfully submits that while it cannot question as it were legally the authority of the company to delineate what mechanical assistance the fireman shall give, or what mechanical things the engineer may do and who in its staff, whether shop or running trades should do a certain thing, the Brotherhood nevertheless respectfully submits, on the basis of the evidence on record, and on the basis of the training given engineers in Switzerland and Holland, that the fireman could be used to advantage, advantage to the railway and advantage to the safety of operation, to a much greater extent than the present bulletins permit in the mechanical operation of the engine and in meeting failures or breakdowns or difficulties as they occur particularly on the road.

In short, Mr. Chairman and Members of the Commission, when one speaks of an emergency on the railroad, an emergent situation, which may not occur very often, the Brotherhood submits that when it does occur, because of the nature of the operation, the consequences can be and



frequently are extremely serious to human health and even to human life as well as to property, and for this reason this question of safety is the central one in the Brotherhood's submission for the consideration of this Commission.

Now, my friend ended his argument on question one with a quotation from Socrates. I suppose I ought to remind him what happened to Socrates for doing that sort of thing.

THE CHAIRMAN: Have you something from Virgil?

MR. LEWIS: No, I have not got anything from Virgil, but I do not think I can pay the Canadian Pacific any greater compliment than to complete my part of the argument on question one with a quotation from Mr. Emerson, the vice president of the company.

THE CHAIRMAN: It is at least more modern.

MR. SINCLAIR: I hope he does as well as Socrates.

MR. LEWIS: It is merely my learned friend's pride in his organization.

Toward the end of my cross-examination of Mr. Emerson I asked him this question which appears in volume 34 at pages 4709 and 4710:-

"Q. I am asking it of you, Mr. Emerson, as a question of policy, not of occurrence. I say to you as a vice president, suppose you became convinced as one of the officers of your railway that the





"removal of the firemen would result in no more than the probability -- I am going to change my question and say 'probability' -- of one additional fatality a year. Would you consider the saving resulting from the removal of the firemen justified as a matter of policy?

A. Well, another way to put the question is, what is the value you place on human life? Would that be a fair statement?

Q. Well, I did not put it that way. You can interpret it as you like in your mind.

A. Well, that is a question which would take a good deal of consideration. I certainly would not agree that the removal of the firemen would not be justified notwithstanding. I would want to give that a good deal of thought because, after all, in every day life there are hazards and it is impossible physically, financially, if you will, to eliminate those hazards."

Then he went on, as members of the Commission will recall, to give an example of something that happened here in Ottawa. Before I make any comment on this I want, in all fairness, to make clear immediately that Mr. Emerson earlier in his evidence, in direct examination as well as in





cross-examination made clear that in his opinion there would not be any greater hazard. It would be most unfair if I did not make that clear. He emphasized that in his opinion there would not be any greater hazard. The Brotherhood submits to this Commission, Mr. Chairman and members of the Commission, that this exchange with Mr. Emerson is perhaps the key to the major part of the problem which it respectfully asks the Commission to consider. It submits to this Commission, and it does so with great respect to Mr. Emerson as an individual and as an officer of the Canadian Pacific Railway that the question put to him does not admit of a good deal of consideration and certainly does not admit of the answer that the removal of the firemen might be justified notwithstanding. It<sup>is</sup>/the earnest and sincere submission of the Brotherhood that if the removal of the diesel helper from the diesel increases hazard to the safety of human beings to any extent whatever, even to a small extent, if the removal reduces the possibility of saving even one human life in a year, then the expense saved by the removal of the firemen is, in the Brotherhood's submission, not justified.

The Brotherhood's comment to Mr. Emerson with respect, Mr. Chairman, is that you can't put any price on human life, as he rephrased the question, and that since the expedience and the evidence placed before this Commission has shown, as I have attempted to analyze it in greater



detail earlier, that accidents involving human life do occur; that they have been averted by railway employees and that the fireman has played a part in averting many of them precisely because of his position on his side of the engine, that that, in the Brotherhood's submission, cannot lead to any conclusion other than that the removal of firemen will increase the hazard, and if it does that, then it should not happen.

His removal will increase the hazards not only in this field of more dramatic event but also, in the Brotherhood's submission, as I indicated earlier, in increasing the number of times people will have to work from the top of cars, and generally in increasing the burden on the engineer, as evidence which I quoted alleged to be the case, on the engineer and on other members on the train.

That takes me, Mr. Chairman, to question two, and my comment with regard to question two is almost a one sentence one, except for one correction I have to make. It is the position of the Brotherhood, sir, that if it should come to that point as a result of any recommendation which your Commission will make that the policy outlined by Mr. Crump as president of the Canadian Pacific and discussed by him, <sup>that</sup> is a matter for the negotiating table, and that this proceeding is not the proper place for the Brotherhood and, therefore, for me as its spokesman, to deal with the proposal.





THE CHAIRMAN: But the Commission has to deal with it.

MR. LEWIS: You are asked by the order in council to do so. It may well be, Mr. Chairman, that it is; I do not know. I am not putting this very strongly. It may well be that the Commission has the right, after dealing with it, also to say that the details of this ought to be worked out in the negotiation between the parties rather than attempt to set out the actual details of a plan; I do not know. I am just saying I am authorized merely to say that in the Brotherhood's opinion this is a matter, more properly a matter for the negotiating table.

THE CHAIRMAN: Otherwise you have nothing to say?

MR. LEWIS: Otherwise I have nothing to say.

That takes me, sir, to question three, dealing with the arbitraries and the mountain differential. Before I deal with each of those separately I wish to make what I submit is my major submission with regard to question three, and I should like, with your permission, to put it perhaps a little provocatively but I think accurately by saying to this Commission that what the company requests in this connection really amount to is a pure and simple request for a wage cut, and it is my respectfully submission that 1957 is not the year in which in our country wage cuts are even discussed, let alone justified.





Now, although the arbitraries and the mountain differential arose historically many years ago, around the turn of the century, as my learned friend reviewed in his argument, the preparatory arbitraries appeared in the western agreement in 1912, in the eastern agreement in 1920. The final arbitraries appeared in the western agreement in 1918 and in the eastern agreement in 1920. In actual fact some of them, as my learned friend summarized for the Commission, were in vogue, as it were, in practice even before they actually appeared in the agreement although in another form. The mountain differential apparently appeared first in that agreement in 1897, and all of this history was dealt with by Mr. Gossage in volume 1 of the transcript. The page number was given by my learned friend. I will look it up later, if I may. I have it in my rough notes.

THE CHAIRMAN: We probably have it already in Mr. Sinclair's argument.

MR. LEWIS: You have it already.

Now, the point I want to make is that ever since those years, in other words, for half a century or more, both the arbitraries and the mountain differential have been a part of the wage packet of the firemen as of the wage packet of other employees of the railway. Exhibit 143, as my learned friend reminded the Commission the other day, sets out the elements which make up the pay of a fireman.



Two of those elements are the preparatory and the final arbitraries. In the case of the people working in the territory governed by the mountain differential, the mountain differential would be the sixth element. If my memory serves me right that is in exhibit 143. My learned friend nods his head and says that is correct. So that for employees working in the territory governed by the mountain differential there would be the sixth element of mountain differential, and all of these elements make up my wages if I am a fireman on the C.P.R. When I receive a pay cheque, the amount on the pay cheque is the result of the additions of A, B, C, D and E; but I, as a workman, am not concerned with the proportion that goes to A and the proportion that goes to B, C, D, or E; I am concerned with the result, and I have recognized that and the company has recognized that as my earnings, my wages. The request of the company, in the Brotherhood's respectful submission, necessarily means a cut in my wages without, Mr. Chairman, and members of the Commission, this Commission having dealt with, or having had the obligation to deal with the overriding question as to whether my wages are adequate or not, as to whether in fact they should be cut, because that was not the question before you.



Therefore, what the C.P.R. is seeking is a cut in my wages, or a suggestion for a cut in my wages, by a tribunal which, because of its terms of reference, could not and did not go into the merits of the question as to whether my wages should be increased or reduced.

THE CHAIRMAN: Am I wrong in this, that the inclusion of this question was the subject of agreement between the union and the railway company.

MR. LEWIS: Do you mean the inclusion of this question should come before the Commission?

THE CHAIRMAN: Yes.

MR. LEWIS: Yes.

THE CHAIRMAN: If anyone thought evidence as to the adequacy of pay or any other element was necessary for us to answer, surely the obligation was on that party to present that evidence.

MR. LEWIS: In one sense. At the time the agreement or the settlement of the strike was arrived at, in certain circumstances, certainly the Brotherhood agreed that this should come before this Commission; but, in my respectful submission, the fact that the Commission has been asked the question does not mean the Commission could not answer the question in the way I am going to suggest. I am going to make a specific





suggestion in regard to arbitraries and a negative submission in regard to Mountain differentials.

THE CHAIRMAN: I was just dealing with this offhand. If we should not express any opinion on this question for the reason that you have put, that surely was such an obvious thing that if there had been any idea that it was a relevant consideration at the time you agreed to these questions being put it should have been mentioned and, therefore, if it was not mentioned the question really is put forward by both parties devoid of that consideration at all.

MR. LEWIS: That is so, sir, but, in my respectful submission, may I put it as strongly as this and I hope inoffensively: it is not possible for this Commission or any tribunal to answer the question and say, for example, that the arbitraries should be eliminated or modified in such and such a way or that the Mountain differential should be reduced to the rates of the Valley differential.

HON. MR. McLAURIN: You say that if we did we are not equipped to do the job?

MR. LEWIS: Yes. Let me say this, that there had been negotiations on the monetary issues involved between the Brotherhood and the railway, and as Exhibits 1-A, 2-A, 3-A and 4-A, indicate -- which I think are the Exhibits -- agreements were reached involving





the total monetary picture.

HON. MR. McLAURIN: There is **very** little involved in the Mountain differentials. I think it is only about \$6,000.

MR. LEWIS: I believe it is in Exhibit 15. It is \$16,000.

HON. MR. McLAURIN: It means something to an individual but was pretty small stuff.

MR. LEWIS: That is a matter with which I am not dealing and I am not giving that as a reference. I will go into the arbitraries and the Mountain differential a little more and I am not going to burden the Commission with a great deal because we went over it very thoroughly when my learned friend gave his argument.

As one goes into these individually it is clear they have been <sup>a</sup>completely illogical inconsistent conglomeration over the years certainly and as Mr. Gossage said in evidence, and my learned friend said in argument, it was inconsistent that one arbitrary for the same work was higher in the west and lower in the east and there were some sections in Valley territory in British Columbia which presented difficulties at least as great as in the Mountain territory. All those things are true, but what do they underline? They underline the fact that the logic was not there. There was, over the years, give and



take in arranging the total wage pattern. Someone gave a little here and someone gave a little there, which is how you arrive at labour-management settlement.

I appreciate what you have said, Mr. Chairman, and you will appreciate my difficulty because of that. It presents an obstacle to my argument. However I feel it a duty to bring this consideration to the Commission, that to take a couple of elements out of the total wage packet developed over the years out of its context and deal with it on the basis purely of logic, obviously from the result could not have been the basis for what is in the packet now.

Mr. Druce, in his evidence, if I may read one paragraph, emphasizes what I have presented. Mr. Druce in his evidence dealt with this in a paragraph about which my learned friend did not ask him any questions and, if my memory serves me right, the essence of it is not contradicted anywhere in the evidence. This is in Volume 55, page 7815, paragraph 8.

"As a result of the arbitration Award of 1915," --  
which I discussed earlier --  
" -- the McAdoo Award of 1918" --  
which I also discussed earlier --



"And the subsequent agreements between the Canadian Pacific Railway and the Brotherhood, the Mountain and Valley differentials and the preparatory and final inspection arbitraries, were established as an integral part of the wages paid firemen or helpers for their services. In every subsequent collective agreement right until the last one, and in all negotiations between the Brotherhood and the railway," --

and I ask the Commission particularly to note this --

"differentials and arbitraries were taken into account as a part of the wage packet agreed upon between the Brotherhood and the railway. In any case, when the parties could not agree between themselves the issue of wages, including differentials and arbitraries was placed before Boards of Conciliation and/or Arbitration. At no time in the past, did either party succeed in treating the differentials and arbitraries as something apart from and unrelated to the rest of the wage package."





In my respectful submission the request of the railways is, in effect, a request for a wage cut. It is also my respectful submission to this Commission that the answer to question 3, or parts of it, should be a negative one on that ground alone, if on no other ground.

Now, in the alternative -- and the alternative relates only to the arbitr-aries and not the Mountain differential -- I am authorised to suggest to the Commission that the Brotherhood readily recognizes that pages 6 and 10 of Exhibit 7 and the whole of Exhibit 14 -- Members of the Commission will recall pages 6 and 10 of Exhibit 7 which delineates the fireman's inspection duties and limitations, and Exhibit 114 which delineates the duties of engineers in preparatory and final inspection of various classes of cars. These bulletins issued by the company -- the first one, pages 6 and 10 of Exhibit 7 in October 1956, and Exhibit 114 in November of 1956 -- have reduced the preparatory, and almost eliminated the final inspection work, at least on diesel engines.

Those are the facts to be drawn from those exhibits. This of course does not include, and my statement can not include, the time that is involved in booking out when coming off a shift and the



time involved in booking in when coming on a shift. There is the time involved in walking from the change-off point, whether the shop track or somewhere else, to or from the point of booking in and booking out, and the time involved in reading bulletins and the like which may take some time. The Commission will recall the evidence, in some instances five minutes or six minutes or about that period of time.

As I started to say, the Brotherhood<sup>authorized</sup>/me to say it recognizes the exhibits have reduced the preliminary and almost final inspection work on diesel engines. It also recognizes, as a result of that development, the present arbitraries as shown on Exhibit 5, particularly with respect to diesels.

THE CHAIRMAN: On what exhibit?

MR. LEWIS: Exhibit 5, particularly with respect to diesels, although not necessarily limited to them, and those arbitraries are not related to work done or work expected to be done.

The Brotherhood is not prepared to discuss a modification or modifications of these arbitraries shown on Exhibit 5. That is, excluding the hostling and work train alleged arbitraries with which I shall deal separately. The Brotherhood, therefore, respectfully suggests that the answer to question 3 by the Commission



with respect to preparatory and final inspection arbitraries might be, or should be in its respectful submission, to the effect that they ought to be modified and that the evidence supports a conclusion they should be modified. Then, further, that the question of how and to what extent they should be modified -- this is also asked in question 3-- that that question should be remitted or left to the parties for negotiations in the light of the finding of the Commission; in other words, in the light of the finding of the Commission that they should be modified.

I thought I would place that before the Commission immediately so that anything else I have to say about arbitraries would be in that context.

In this connection I should like to draw your attention first to Article 22, Exhibit 1 at page 40. That sets out the work which must be done on the engine, some by the firemen and some by other people.

I am particularly interested in drawing to your attention section (b):

"Firemen will be relieved of cleaning engines. Lubricators will be filled, headlights, markers and other lamps cared for (including filling, but not



"lighting) and all supplies placed on engines at points where roundhouse or shop staff is maintained. The fireman shall not be relieved of responsibility of knowing that the engine, for which he is called, is properly equipped for service."

It is still an obligation of the person covered by this agreement that he is responsible for knowing that the engine for which he is called is properly equipped for service.

THE CHAIRMAN: Is that article not overridden by the bulletin?

MR. LEWIS: I was coming to that. In dealing with that article, Mr. Gossage claimed it was changed, as far as diesel power is concerned, by pages 6 and 10 of Exhibit 7 and, I suppose by implication, also by Exhibit 114 to which I have referred.

I agree, Mr. Chairman, that it is possible for the railway to make this kind of a change so long as it does not increase the duties required of a fireman; it can decrease them, as it were, without violating the agreement. But, Mr. Gossage also agreed, or admitted whichever the word is, that there is no bulletin which





has reduced the fireman's obligations with respect to the steam engine. You will find that in Volume 1 at pages 110, 111 and 113.

Now, Members of the Commission of course are keeping in mind in dealing with arbitraries and Mountain differential that the requests not only concern yard freight and diesel but concern all power, steam as well as diesel, and also passenger as well as freight and yard. Therefore steam preparatory and steam final are still an obligation on the fireman.

May I spend a moment on these inconsistencies to which I have already referred. I want to make this comment, that there is a higher arbitrary for certain things in the west than the east when the same work is applied, which one can see very quickly by looking at Exhibit 5. As I have already said what that proves is there was a give and take during negotiations.

My Lord, Mr. Chief Justice McLaurin, if my memory serves me right, I think at some point said:

"Well, the Brotherhood in the west got a better deal from you."

I believe he said that to my learned friend in some connection. My point is I do not know and this Commission does not



know, because there are other differences in the agreement. For example, as it was drawn to the attention of the Commission earlier in these proceedings, many many months ago, overtime under the eastern agreement is paid for at penalty rates, that is time and a half overtime, and under the western agreement is paid for pro rata time, or at standard rates, rather than time and a half rates in the case of road; and the case of yard service, I believe it is time and a half both east and west.

Now, there is a difference if one studies the agreement as I have done -- a small difference -- in the pay on service on oil engines as between east and west. If the Commission will permit me to make this general statement, there appears to be, even at a cursory look at Exhibits 1 and 2, quite a number of differences between the two agreements in every district. They are two separate agreements and whether in fact the people covered by the western agreement make more in wages than the people in the east, there is no evidence on that before the Commission.



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I have a suspicion that if there had been any significant difference in the wages of firemen in the west and the wages of firemen in the east, or vice versa for that matter, that my learned friend and his advisers, who have not missed very much in favour of any of their contentions or anything at all, I must say to some sorrow, would not have failed to produce that before the Commission. I do not know whether or not there was any preference in the total result, and I respectfully suggest that it is perfectly legitimate and a logical conclusion and inference that there is not any, that there is not likely to be any substantial difference, any significant difference between the earnings of the group as a whole under the Western Agreement and the earnings of the group as a whole under the Eastern Agreement. As we all know, individual earnings may differ depending on the runs and all that sort of thing. If there were any significant difference the Brotherhood no doubt would have had considerable trouble before now. I submit that that is a perfectly logical inference.

Furthermore, I should like to draw the attention of the Commission to





a very significant exchange between Mr. Gossage and Commission counsel, Mr. Mundel, on this question, to be found in Volume 3, pages 353-354.

Mr. Mundel asked the following questions?

"Q. How are these times recorded? I was just wondering. On the company's proposals you say you want to put the charge on the basis of time. Actually it seems to me that you are just going to have a standard arbitrary for each point instead of a general arbitrary.

A. There would be an allowance at each point related to the conditions at that point and the knowledge of the service; it might be different in run-through and shop track.

Q. Isn't this just a series of individual arbitraries?

A. These would be allowances. If there were changes in conditions that created any major change subsequently, those allowances would be changed to reflect those changed conditions.

Q. But as far as the operation is concerned, I would report 15 minutes before my engine was due to leave the shop track?



"A. There would be at each terminal a stated time to avoid trying to account for every individual --

Q. It is hardly accurate, then, to say it is going to be time actually worked in all instances?

A. Not for a particular engine, but it would be based on a study of what was actually done at each terminal.

Q. I suppose it could be said it would be an individual arbitrary?

A. It would be directly related to the work performed, and an element of arbitrariness would be removed."

MR. SINCLAIR: I think my learned friend should continue and read from pages 355 and 356 where the matter I think was succinctly cleared up.

THE CHAIRMAN: Mr. Sinclair thinks it is a little muggy at this point.

MR. LEWIS: I think it is very clear, but it gets muggied up a bit after lunch. However, I shall be glad to read from pages 355 and 356. Mr. Mundel is continuing his questioning:

"Q. Referring to arbitraries,



"Mr. Gossage, as I understand it, your proposal is that you will establish a new set of specifications -- whatever you want to call the arbitraries, for the sake of argument -- for each specific point, and that would be related to what you would say would be a more realistic basis.

A. I don't know that I would agree entirely with that description, but the principle we are working on is that we should pay for the time required on duty.

Q. Why not book him in and pay for that time?

A. That is exactly what we propose to do. What would really happen is that initial terminal delay instead of starting at the time the engine leaves the shop track would start at the time the men are required to report for duty.

Q. You would take the actual minutes?

A. Yes. At the time we would require them to report for duty; we would order them for the time we required them, and instead of it being the time the engine left the



"shop track, it would be sufficient time, which we would establish for our own satisfaction on the basis of what we were required to do at each point. We would establish that for the guidance of the company officers. The men would be ordered, say, for 7.10, on an engine leaving the shop track at 7.20 or 7.25, depending on what the requirement was. If the company required 20 minutes' work, the engine would leave the track at 7.50, but the men would be on initial terminal delay. There would be no reason to separate preparatory time from initial terminal delay."

Now, in my respectful submission, the pages from the transcript which I have just read add nothing at all to what I read before, except that Mr. Gossage suggests there that it would be part of the initial terminal delay. With great respect I do not think it matters at all what name you call it. The fact is that as far as preparatory time is concerned -- I appreciate that it does not apply to final, Mr. Chairman, and I want to make that clear -- there would remain what would be in effect an arbitrary, only it would be set unilaterally by the company instead of by negotiation between





the two companies. That is all the difference.

The other difference is that instead of being a general arbitrary applicable to all points covered by the whole agreement, that is by the Eastern Agreement and by the Western Agreement, the company would set specific individual arbitraries, presumably at each terminal. I suppose they would take into account whether or not there was sufficient shop staff, whether it took three or four minutes to walk from the booking-out office to the change-off point, or whether it took only two or three minutes, or whatever it may be.

That that is the intention of the company is clear also from the second sheet of Exhibit 15. The first sheet of Exhibit 15 gives the savings to the company under the various heads in the Order-in-Council and then the second sheet contains the heading, "Tentative Estimates of Time actually required for Preparatory and Final Inspection Services." Then the times are given. I have set them out in red pencil on my copy of Exhibit 5.

First there was the intention to eliminate the distinction between the



east and west, and the proposal on the second sheet of Exhibit 15 eliminates that distinction. In logic I admit on behalf of the Brotherhood that there is no reason for the distinction, but if I may repeat I would say that before it can be decided that it is a right and just thing to do it would be necessary to know whether the Brotherhood in the west did not give up some other things in order to have the other arbitraries.

Then it reduces the initial and final arbitraries down the line. On some the reduction is relatively little, 10 or 15 minutes; but in one case only, if I remember rightly, the reduction is as high as half an hour.

THE CHAIRMAN: What do you say the second thing is?

MR. LEWIS: The second thing is that it reduces the final and preparatory arbitraries, modifies them. In one case, diesel-yard on the second sheet -- this is the third point -- in one case, namely diesel engine-yard on the second sheet of Exhibit 15 it eliminates both the initial and final inspection duties.

All of which leads me to support the suggestion which I put to the Commission on behalf of the Brotherhood that



it answers Question 3 to the effect that the arbitrary should be modified by remitting to the parties the discussion of how and to what extent they should be modified.

I come next to the point of the alleged arbitrary with regard to hostling services. You will recall that this is covered by Article 15 of Exhibit 1, page 26 of that exhibit. You will forgive me if I read that because my submission with regard to this -- perhaps it would be helpful if I indicated that before I read the article -- my submission is that this is not an arbitrary in any sense of the term as used anywhere else in this agreement or in the proceedings before this Commission.

THE CHAIRMAN: And therefore is not an arbitrary in the sense of any question that is asked us?

MR. LEWIS: Therefore not an arbitrary in the sense in which the term is used in Question No. 3. Whether or not it was understood to be included I do not know.

MR. SINCLAIR: As I said before, it is specified in Exhibits 1A, 2A, 3A and 4A. That is why I specifically referred to them because this very same point was raised





once before and I pointed out that this very article was covered by the agreement. I would refer to page 8 of Exhibit 1A, being Article 15, which reads:

"Article 15 - Hostling,  
housing and taking engine out.

Minimum allowance for  
putting engine in and taking engine  
out of shop when fireman is required  
to do such work."

MR. LEWIS: My friend is quite right; I am sorry, I did not notice that. I was wrong in saying that it was not there, not included in Question No. 3. I am sorry, as clearly from that agreement it is included in the subject matter under Question No. 3.

But I still say that in spite of that agreement, it is not an arbitrary in any sense of the word in which it is used and has been used in these proceedings. Article 15 reads:

"When the miles on any run  
and service performed make 100 miles  
or more, firemen will be paid a  
minimum of 15 minutes at rate for  
class of service --"

I interrupt there. Members of the Commission recall that in Exhibit 2, which is the Western Agreement, it is 30 minutes



under the same provision,

"-- for taking engine out at points where fireman is required to do such work, but when it takes more than 15 minutes, actual time will be paid for such work. Time so occupied will not be included in time covered by day's work."

My respectful submission is that hostling is separately covered by Exhibit 1, the agreement. It is indicated as a separate function and the hostlers have certain rights, and so on.

What this article provides is that when a fireman, in whose normal duties hostling is not included, is required to move an engine into a shop or take it out, to do hostling duties not normally his, then he will be paid a minimum of 15 minutes.

When you ask me to do that, I am entitled to not less than 15 minutes, although it may take me only 5 or 10 minutes to do it. I am entitled to at least 15 minutes, which is surely the smallest component of minutes that normally would be taken. If it takes me more then I am entitled to more because it is not part of my normal duties as a fireman.



Then the time so occupied will not be included in the time covered by my day's work. In other words, even though I get the rest of my work done in seven hours and forty-five minutes you cannot include the 15 minutes in my day's work and not pay me for those 15 minutes separately. That is the minimum which is added for a particular job which is not normally mine. That is all it is; it is not an arbitrary.

I do not get it whether or not, I get it only when I do hostling, and I do hostling only when the company tells me to. It is done for the convenience of the company, when they have not anybody else to do it presumably. It is only when they ask me to do that particular job that I am guaranteed the minimum payment, and it is only in that case. All other arbitraries are added; once I am called in I get so much preparatory, so much final, as part of my day's work.

But this is merely a minimum provision in those cases where I am asked to do it or told to do it by a company officer. For that reason it is not an arbitrary in the sense that the others are at all, and for that reason too the Brotherhood regrets that it cannot agree



that it should be modified in any way, let alone eliminated.

Perhaps in the negotiations between the parties they might arrive at some solution to this, if it is of any great significance or consequence to the railway company or if it involves any very great cost, which I seriously doubt. They might arrive at something, but with great respect I do not see how this Commission can say that the firemen must from now on do hostling which is not normally part of their work.

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Then, I have to deal under this head with work train arbitraries. It is nearer to being an arbitrary, although I suggest that two is not quite the same thing. That, the Commission will recall, is article 8 on page 21 of exhibit 1, and is section (b) of article 8.

Mr. Chairman, there is one point I should like to raise merely to clear it up because before going on with that I admit that I do not recall any evidence at all on this point. I do recall my friend in his argument -- I don't mean on the point of work trains, I mean on the point I am about to mention -- I do recall that in his argument my learned friend said that the engine crew or the firemen on the work train would get his preparatory arbitrary and his final arbitrary in the usual way as a fireman on the freight, but he would get this in addition. Now, it may well be. I am not trying to give evidence, Mr. Chairman.

MR. SINCLAIR: I did not say that.

MR. LEWIS: That is what I understood my friend to say.

MR. SINCLAIR: I said that about hostling, not about work trains.

MR. LEWIS: It is agreed that the work train crew does not get the ordinary preparatory or final, because that is how I read section (a) of article 8.

MR. SINCLAIR: What I did say was that the work train people got the final only



when it was tied up on the road. The preparatory, when it was tied up on the road, would be the same as specified in exhibit 5, and if the work train went into the terminal no special provision applied. I think that is what I said.

MR. LEWIS: Since there is no evidence I do not know whether we can get very far on that specific point I have in mind. I just want to draw to the Commission's attention section (a) of article 8, which reads:

" Day's work for fireman on work train will start when required to report for duty. Eight hours or less to be one day."

I could find nothing like this relating to firemen in yard or freight service, I mean in road service, relating to firemen on the road service, and if I read that with the words it means that the man's day starts when he is required to report for duty, not with any preparatory arbitrary attached, and that is the only thing that made me wonder, but that, of course, does not exhaust this subject. Section (b) of article 8 reads:

" Fireman on work train when <sup>up</sup> laid/at any other than regular roundhouse with regular shop men, will be allowed one hour pro rata after laid up by conductor to cover necessary repairs and get



"engine ready. Except when a fireman is held on (after laid up by conductor) to watch engine, he will be paid as on continuous time and the one hour arbitrary at pro rata will not apply."

As I see it, he may, instead of being required to do anything on the engine, be required to act as a watchman on the engine, and when he does that he gets paid on a continuous time basis, and the one hour arbitrary does not apply. But when he is not used as a watchman, then there is this one hour paid pro rata. It is clear from the words of the section, Mr. Chairman, that it certainly was intended originally to be a payment for work done. It is clear that what is intended on the language of the section is that since the engine was laid up at a place where there are no regular shopmen, no roundhouse, that it would be the firemen, perhaps also the engineer, if there was a similar provision in their agreement; I do not know, who would do whatever work was necessary to be done on the engine at that point after the conductor had laid it up at that point.

Now, Mr. Chairman, there is evidence that that work has been much reduced under steam and, of course, my learned friend argued, on the basis of the evidence, I quickly add, that there would be nothing to do in the case of the diesel locomotive. But again it covers both;





it was a part of negotiations between the parties over the years. It is a part of a wage packet in connection with the work train. Again, Mr. Chairman, it is entirely in the hands of the company as to where the conductor lays up the train. Presumably either he has authority to do it himself, or more likely, he is given instructions as to where to lay up the work train, and I get my hour only when on instructions from the company the train is laid up, the work train is laid up, presumably, in some forsaken point, since there is neither roundhouse nor shop staff, and for the purpose of anything that may have to be done around the engine, it may well be, sir, that in some cases one hour pro rata is too high; I do not know. But I respectfully submit that again it is not an automatic payment for every work train. It is paid only to the firemen on a work train which is laid up at a particular place as described in the section, which is within the control of the company, and if the train is laid up at a place where I am entitled to my hour, it is for the convenience of the company, decided by it, and it therefore does not fall within the same kind of concept as the arbitrary and final inspection arbitrariness on which I made the other suggestion on behalf of the Brotherhood.

That, sir, takes me to the mountain differential.

THE CHAIRMAN: On hostling, article 15,



the difference between you and Mr. Sinclair is that you say at the present time you get a minimum of 15 minutes, and that is what is in dispute between you. The company says, "I want to pay for the time actually taken", and you want to hang on to the 15 minutes minimum. Is that not it?

MR. LEWIS: That is practically it. I think the other point that may be involved is this. In the case of time that my work may get finished, if I am on a day job, some minutes before my eight hours, they would include it in my eight hours, presumably, and I would not get anything at all. That is what is involved.

THE CHAIRMAN: I do not know whether it is important or not, but I may be stupid about 8 (b). I do not quite follow it. It says:

" Fireman on work train when laid up at any other than regular round-house with regular shop men, will be allowed one hour pro rata after laid up by conductor to cover necessary repairs and get engine ready. Except when a fireman is held on (after laid up by conductor) to watch engine, he will be paid as on continuous time and the one hour arbitrary at pro rata will not apply."

At the moment, it seems to me that the second sentence completely contradicts the first, and there is something I am not following.



MR. LEWIS: If I understand it, Mr. Chairman, -- my friend will correct me if I am wrong. I will put it in as easy terms as I can so as not to be misleading. It may be necessary when the train is laid up at a point other than a roundhouse to watch the engine, and there may not be a watchman present. In some places there would be a watchman and in some there would not be a watchman present; that is; an employee actually engaged all the time as a watchman. He would not be present. In that case the fireman may be requested to act as a watchman after the conductor has laid the train up. As I understand it, what the section says is that when the fireman is asked to act as a watchman after the train has been laid up, then he is on continuous time. If he watches for two hours, three hours or four hours, he will get that pay.

THE CHAIRMAN:; Really it should be all one sentence with a comma after "ready".

MR. LEWIS: That is right. All that sentence really means is that he is not going to get the arbitrary of one hour on top of being paid so many hours as a watchman.

THE CHAIRMAN: If he is a watchman he gets paid on a pro rata rate; if he is not a watchman he gets the one hour.

MR. LEWIS: In both cases he is paid the pro rata rate, but if he is a watchman he gets paid for the time he watches as continuous





time; if not a watchman he gets this arbitrary or the minimum of one hour.

THE CHAIRMAN: I would not have followed that. I see what it means now.

MR. LEWIS: Now, my first point with regard to mountain differential in addition to the general observation I made in introducing my argument on question three is that in spite of things that I wish to refer to, the evidence still establishes conclusively that the average speed in mountain subdivision is slower than the average speed on the valley subdivision in British Columbia; and furthermore that it is slower by approximately the same proportion as it was under steam.

My learned friend, in cross-examining Mr. Hobbs on exhibits 253, 254, 255, 256 and 257, criticized those exhibits and he filed exhibit 261 to emphasize his criticism. He criticized those exhibits on two grounds. I should recall to the memory of the Commission that exhibits 253 and 254 were exhibits filed by Mr. Hobbs, giving the time in arriving at the average time for freight trains other than way trains on mountain territory during the period that he had available. Exhibits 255 and 256 did the same thing from the trip tickets of another employee which he obtained by mail covering the Shuswap subdivision, and exhibit 257 did the same thing from an employees from the trip tickets <sup>of</sup> /an employee who worked





on the Thompson subdivision. My learned friend attacked in cross-examination and again in his argument the said exhibits 253 to 257 inclusive on two grounds: one, that they did not all cover the same period; some of them covered a longer period than others and, two, that the proportion of symbol of fourth class and extra trains was higher in the exhibits covering valley territory subdivision than it was in the exhibits covering the Mountain subdivision.

Now, Mr. Chairman, I could spend quite a few minutes trying to persuade the Commission that my friend's criticism of the said exhibits 253 to 257, inclusive, is unjustified, but it would be a complete waste of time, an exercise merely in forensic gymnastics to no purpose, in view of exhibit 115 (b) which my friend filed at my request, or in reply to a request of mine through if I remember correctly, Mr. Fraine.

THE CHAIRMAN: What exhibit?

MR. LEWIS: At the top of that page. I remind the Commission this was information requested by me. Members of the Commission will recall that I suggested it was not satisfactory, to use a neutral term, to arrive at average times on the basis of the timetable, the scheduled time; that I asked for the average times on the basis of actual time taken, to be taken from the records, from the trip tickets, the ordinary records the company has.



Now, Mr. Chairman, permit me to give you this summary. Exhibit 253, for the moment, which Mr. Hobbs filed, gave an average mile per hour for the Mountain subdivision of 16.5, and exhibit 254 arrived at an average miles per hour for the Mountain subdivision of 16.04. If you will look at exhibit 115 (b), the second line from the bottom, you will see the average for the month of November, all the records that my friend was able to collect covering the same trains, freight trains other than way freights, was 17.5. Our exhibit showed 16.5. This average for a larger sample shows 17.5.

THE CHAIRMAN: Exhibit 115 (b) on the basis of timetables or actual?

MR. LEWIS: No, actual time taken, if my memory serves me right, shop track to shop track.

MR. SINCLAIR: Terminal to terminal.

MR. LEWIS: As I recall it, Mr. Chairman -- I am quite confident I am right -- on precisely the same basis as Mr. Hobbs constructed his exhibits 253 and 254.

Now, if you take the Thompson subdivision, which is the only one dealt with in exhibit 115 (b) and 257, Mr. Hobbs' exhibits, which deal with the Thompson case, the average miles per hour are 22.67. In Mr. Sinclair's exhibit 115 (b), the last entry on it, gives an average for the Thompson subdivision of 22.6.



Ours is 22.67, his is 22.6. In other words, Mr. Chairman, it is clear from a study of the Mountain and Thompson subdivisions that the information given in exhibits 253, 254 and 257 is in line with the information produced by the wider sample in exhibit 115 (b). In other words, on Mr. Hobbs' exhibits the difference in average miles per hour in the mountain over the Thompson is roughly six miles. In other words, on exhibit 115 (b) the difference is roughly five miles.

THE CHAIRMAN: Wait until I get that. What is that again?

MR. LEWIS: The difference between the mountain averages, the average per hour and the Thompson average speed per hour in Mr. Hobbs' exhibits 253, 254 and 257 is six miles; the difference in 115 (b) is five miles, the difference between 16.5 and 17.5 is one, in the case of 253. Furthermore, Mr. Chairman, I said that the difference still remained the same as it was under steam. I refer to volume 18 of the transcript at pages 2384 and 2385.

THE CHAIRMAN: Exhibit 115 (b) covers both steam and diesel trains.

MR. LEWIS: I would think so, Mr. Chairman, although in November, 1956, there would not be any steam, if I remember the evidence correctly, in the Mountain subdivision certainly not and probably not in the others either, certainly nothing to upset the picture. As far as power is concerned,







I want for a moment to deal with page 2384 of volume 18 of the transcript. At the bottom of the page Mr. Sinclair said this:

" Well, now, so as to have these all together I will put in with your permission myself rather than through Mr. Fraine, in volume 3 at page 287, Mr. Lewis in questioning Mr. Gossage and following a remark made by you, Mr. Chairman, asked for -- Mr. Gossage was giving a comparison between the Mountain and Thompson subdivisions today that is, miles per hour and they were very close indeed. Mr. Lewis asked at page 287 and 288 that the comparison be got for the same days and I have got that information now."

It is a little jumbled up in the transcript, sir.



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Mr. Lewis

That is all a little jumbled up  
in the transcript, sir:

"This is a memorandum --"  
With apologies to the transcriber. It  
goes on to say:

"I will read it in. This is a  
memorandum in connection with  
information requested in Volume 3,  
page 288, lines 3 to 16:

'Average schedule speed of  
symbol trains on Mountain  
Subdivision and Thompson Sub-  
division based on average of  
July 1950 and February 1951  
(steam operations).

Mountain Subdivision extended  
16.8 miles per hour.

Thompson Subdivision 21.2  
miles per hour.'

And there are arguments and points  
that flow from that."

Now, I appreciate, Mr. Chairman,  
that this statement says that the speeds  
given are for symbol trains.

MR. SINCLAIR: They are schedule  
trains.

MR. LEWIS: Yes, they are schedule  
trains.

MR. SINCLAIR: You should have  
known that, I am surprised at you.



THE CHAIRMAN: Well, I am not following this discussion.

MR. LEWIS: If my learned friend will not interrupt me I knew it was scheduled. I am coming to that in a moment. I am saying I appreciate that the information given by Mr. Sinclair at page 2835 of Volume 18 appears to be related in the words to symbol trains but the difference is what is relevant here and you have got a different number, 16.8 miles per hour and 21.2 miles per hour which, if my arithmetic is correct, is roughly a difference of 4-1/2 miles per hour.

Now, I appreciate the point that my friend quite appropriately drew to my attention, that those figures given by my learned friend were on the basis of schedule timetables rather than on the work tickets and so on and the other information. But I draw the Commission's attention to evidence which appears on this point given by Mr. May in Volume 59, pages 8241 and 8242, and at those pages Mr. May stated to the Commission -- I am not quoting but I am certain I am summarizing accurately -- that these times given for steam engines -- the speeds are given for the steam engines which I have



just called to your attention, 16.8 for the Mountain and 21.2 for the Thompson Subdivision, said Mr. May "appear to be correct and realistic because there was in those days never any great difficulty in attaining schedule speeds as prescribed."

THE CHAIRMAN: Who was Mr. May again?

MR. LEWIS: Mr. May was an engineer from Revelstoke, I think, who presented a brief to the Commission in Vancouver and I must say, Mr. Chairman, if I recall Mr. May's evidence -- and it reads well too -- it was given with sincerity and he answered my learned friend's cross-examination with great frankness whether it was a point in his favour or not and I am certain if the members of the Commission recall Mr. May they would recall him very favourably. He obviously had had a great deal of experience and was not a man to say things he did not believe to be right whatever the objective situation might be.

It is the only evidence I can find on <sup>which</sup> / I could base my submission to the Commission and I do not emphasize it out of proportion, that the difference between the Mountain and the Thompson Subdivision in the steam days was,





according to the information my learned friend gave, assuming Mr. May is right that the actual times were very near the schedule times -- that the difference then was not as great at least for those periods than the difference shown in 115B or in 253, 254 on the one hand and 257 on the other. And may I add this, Mr. Chairman, that it may well -- I merely say this very quickly -- the reason why the company's Exhibit 115B is so closely in line with Mr. Hobbs' Exhibits 253, 254 and 257, in spite of the theoretically justified criticisms that my friend gave -- because they were theoretically justified, I am quite ready to admit -- it may well be that the reason why they were so close in spite of that justified criticism is that my friend equated symbol trains with faster trains and fourth class or extra trains with slower trains.

THE CHAIRMAN: Equated what?

MR. LEWIS: Equated symbol trains as being necessarily in all cases the faster trains and fourth class or extra trains as being necessarily in all cases the slower trains. There is evidence both from Mr. Hobbs and Mr. May suggesting that that is not the case, that you may have symbol trains which



may not be the fastest and you often have extra or fourth-class trains that run on the same time schedule as a symbol train and may be just as fast as a symbol train. So that the difference he, I think, drew in Exhibit 261 or implied is not an actual difference and for that statement now, Mr. Chairman, I rely on the evidence at least of Hobbs at Volume 52, pages 7382 and 7383.

THE CHAIRMAN: Again?

MR. LEWIS: Volume 52, pages 7382 and 7383. And May, Volume 59, page 8244.

Now, to the extent, therefore, Mr. Chairman, that the difference in speed between the Valley and the Mountain accounted for the difference in Valley and Mountain differential in the past -- to that extent, that difference is still entirely justified on the basis of the company's Exhibit 115B. I ignore my own since I can rely on the opposition's exhibit. The company's Exhibit 115B and on the basis of Mr. Sinclair's statement to this Commission in regard to steam in Volume 18, the reference to which I have already given, because the difference between the Mountain and Thompson subdivisions, the difference in the speed



per mile per hour is greater now as given in 115B or a year from now than it was in July 1950 and February 1951 in steam.

Now, when my learned friend dealt with 115B while admitting that there was this five-mile difference between the Thompson and the Mountain subdivisions he then went on to point out that there are other subdivisions shown on that same exhibit where the average speed per hour is even lower than in the Mountain and he pointed to the Galt Subdivision. I think that is the only one that is lower than the Mountain. Then he pointed to subdivisions where the speed is higher than the Thompson -- the Broadview and the Swift Current -- and he asked Mr. Hobbs, if my memory serves me aright, whether there **should** be some differences in pay as a result of these differences too.

Now, Mr. Chairman, with great respect may I suggest that that kind of argument is entirely irrelevant to the issue which is before this Commission. It might well be relevant to a question as to whether there should be any differential at all in British Columbia. That would be a different story. Then the average speed in the east somewhere or on the prairies might be relevant to





that, but the question before this Commission, Mr. Chairman, is the proposal of the company that the mountain differential be brought down to the amount of the valley differential and in that context I respectfully submit that the only relevant comparison is a comparison between mountain and valley territory in British Columbia. The fact that there are other inconsistencies with other parts of the country are, in my respectful submission, entirely irrelevant to the discussion on the issue before the Commission.

So, if I may repeat myself very briefly I say on the basis of the speeds the mountain differential as against the valley differential is proven to be entirely justified by Exhibit 115B as well as the exhibits Mr. Hobbs filed and by the information given by my learned friend with regard to steam days.

I respectfully submit that the distinction between valley and mountain as regards special hazards still exists to the extent that steeper grades produce in winter weather more difficult and greater hazards. The steeper grades in the mountain territory still remain, are still there and,



furthermore, members of the Commission will no doubt recall that although retainers are used rather seldom with diesel power they are still required to be used if the train carries more than A rating or, as my learned friend put it the other day, if it carries tonnage that it can carry up a hill -- if it tries to carry tonnage down a hill that it carries up a hill. And the evidence, Mr. Chairman, is also clear that the hazards -- putting this carefully, or trying to -- that the hazards due to snow slides, rock slides and the like still continue in the mountain territory although it is true that the evidence is that there are some parts of British Columbia covered by valley differential which are equally as bad as some parts on the mountain with regard to slides and with snow difficulties and other kinds of difficulties.

Now, this kind of sort of overlapping, in my respectful submission, is inevitable in anything where you draw a line and say, "So many miles are going to be covered by the mountain differential and so many miles by valley territory." Unless you are going to arrive at a patchwork with bits here and bits there instead of a



continuous piece of territory -- unless you are going to do that you are bound to have some illogicalities, overlappings in parts of the same territory. That is what the evidence really proves.

One final point, Mr. Chairman, which I think I can complete before 4.00 o'clock and I shall be finished. I have to deal very briefly with the argument put forward by the company and by my learned friend in his summation that the

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that the company's request for reducing the Mountain differential to the Valley level is justified and apart from the other evidence is justified because there has been a benefit to the fireman in his wages as the result of the multi unit diesel locomotive used on the Mountain territory --very frequently a **four** unit, also frequently although less frequently than the four unit a three unit so that between the four unit and the three unit groups you have an overwhelming majority of locomotives in the Mountain territory as my learned friend pointed out, from the relevant exhibit. Of course that is right and it is also right that the fireman gets paid on the basis of the weight on drivers and he therefore gets a higher rate for a three unit diesel than he would have on a one unit diesel and he gets a higher rate than he did when he was on steam when instead of a multi unit locomotive run by one crew you had an assisting engine run by another crew so that you had two separate steam engines, at least two, the crew of each engine paid on the basis of the weight on drivers of that engine rather than on the combination of the two. That is all very true, Mr. Chairman, but I should like to draw the Commission's attention to the fact that as a result of the elimination of





the assisting engine there was a saving to the Canadian Pacific Railway, a saving of a crew -- and we are now talking money, not the question of whether a fireman is required or not, just the justice of this request of the company -- this three or four unit diesel locomotive is now run by one crew but when you had to have an assisting steam engine, of course, you had to have two crews. There has also been saving on the maintenance and what not but instead of dealing with things like that I simply recall to the Commission the evidence given before it, that in 1955 there was as a result of dieselization a saving to the company from the dieselization of a total of \$24 million during the year 1955. That evidence was given by Mr. Gossage, Volume 2, pages 344 and 345 and also to be found, or he referred in his evidence to page 6 of Exhibit 26 which is the Canadian Pacific Railway Annual Report for the year 1955.

And my point there , of course, is Mr. Chairman that the increase in the wages which the fireman received on the basis of weight on drivers on the multi diesel units were merely a share, I am sure the fireman would say, a very small share, of the benefit which the company derived from the dieselization. I say this has nothing to do with question 1. This is the old and forever new question



as to whether or not the employees of a corporation are entitled to have some share in the benefits of any advances made and that accounts for the benefit which was claimed by Mr. Gossage at page 129 of Volume 6 and through Exhibit 11 and Exhibit 11-A the benefits which a fireman gains from the multi unit diesel locomotives.

In my respectful submission that again was irrelevant for the reason I have just given and I submit on behalf of the Brotherhood that the company has not made out any case for reducing the Mountain differential to the rate of the Valley differential and that the answer to that part of question 3 dealing with the Mountain differential should be a clear negative.

I just have time, Mr. Chairman, before I sit down to say to the Commission and to say it with all the deference at my command, the Brotherhood has requested me to express to the Commission its appreciation -- and I should with respect like to add my own to the Brotherhood's, my appreciation -- to the Commission for the very thorough and patient and always eminently fair manner in which the inquiry has been conducted throughout these many months and I am personally grateful for the patience shown to me personally during these proceedings.



THE CHAIRMAN: Well, thank you Mr. Lewis, for the assistance you have given us. We do not often get bouquets sitting in our positions, but we do appreciate that one.

MR. LEWIS: Thank you. It may be other than bouquets at a future time. I thought I would give the bouquet while it is possible.

THE CHAIRMAN: Well, it is appreciated just the same.

MR. LEWIS: Thank you.

THE CHAIRMAN: Mr. Sinclair, will you have a reply?

MR. SINCLAIR: Yes, Mr. Chairman, I think I may by looking at some notes, have a very short reply.

THE CHAIRMAN: Would you rather do that tomorrow morning?

MR. SINCLAIR: I would think so, sir. I will be very short, I can assure the Commission of that.

THE CHAIRMAN: Very good, that is probably the better way -- tomorrow at half past ten.

--- At 4 p.m. the Commission  
adjourned until 10.30 a.m.  
Tuesday, 5th November, 1957.





Press

**ROYAL COMMISSION ON EMPLOYMENT OF FIREMEN  
ON DIESEL LOCOMOTIVES IN FREIGHT AND YARD  
SERVICE ON THE CANADIAN PACIFIC RAILWAY**

**68**

**PROCEEDINGS**

DATE: Nov. 5, 1957

PLACE: Ottawa, Ont.

PAGES: 9492 - 9524

VOLUME: 68

E. L. FEATHERSTON  
SHORTHAND REPORTER  
241 MANOR AVENUE  
ROCKCLIFFE PARK  
OTTAWA, CANADA







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I N D E X

November 5, 1957

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ROYAL COMMISSION ON EMPLOYMENT OF  
FIREMEN ON DIESEL LOCOMOTIVES IN  
FREIGHT AND YARD SERVICE ON THE  
CANADIAN PACIFIC RAILWAY

Proceedings of public  
hearing held at Ottawa,  
Ontario, Tuesday,  
November 5, 1957.

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PRESENT:

Hon. R. L. Kellock,	Chairman
Hon. C. C. McLaurin,	Member
Hon. Jean Martineau,	Member
Douglas M. Fraser,	Secretary
A. R. Winship,	Asst. Secretary

APPEARANCES:

C. J. A. Hughes, Q.C.,	Representing the Commission
I. D. Sinclair,	Representing the Canadian Pacific Railway Company
David Lewis,	Representing the Brotherhood of Locomotive Firemen and Enginemen

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Tuesday,  
November 5, 1957.

68th DAY

MORNING SESSION

---The Commission resumed at 10.30 p.m.

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THE UNITED STATES OF AMERICA  
DEPARTMENT OF THE ARMY  
OFFICE OF THE ADJUTANT GENERAL  
WASHINGTON, D. C.

TO THE SECRETARY OF THE ARMY  
FROM THE ADJUTANT GENERAL  
SUBJECT: [illegible]

REFERENCE

1. [illegible]  
2. [illegible]  
3. [illegible]  
4. [illegible]  
5. [illegible]

REFERENCE

1. [illegible]  
2. [illegible]  
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MR. SINCLAIR: Mr. Chairman and gentlemen, I do not intend to deal with most of the points mentioned by Mr. Lewis in his presentation yesterday to the Commission because in my respectful submission I have already covered them in my summation last week. However, there were a few points raised by Mr. Lewis in connection with which I think I might be of some assistance.

The first point is that my friend Mr. Lewis in dealing with signal passing referred to his witness Wade and Rule 923 of the Milwaukee road and said, and I am quoting Mr. Lewis from Volume 67, page 9366, that it:

"-- required that firemen as well as enginemen must be ready to receive signals."

The actual rule is set out in Volume 49, page 7026, to which Mr. Lewis referred. It does not provide that, it merely provides, and I am quoting the rule:

"While switching the engineer and fireman must both remain on the engine and give close attention to the signals."

Mr. Lewis then went on to deal with the rules of the New York Central, referring to the evidence of his witness



Flannagan. The rules of the New York Central were quoted in Volume 44, page 6248.

THE CHAIRMAN: Before you leave that, I would like to get a look at what you are referring to. First it is Volume 67, --

MR. SINCLAIR: At page 9366, the middle of the page.

THE CHAIRMAN: And then?

MR. SINCLAIR: I quote my friend:

"Brotherhood Witness Wade, to whom I have referred, also read into the record during his evidence Rule 923 of the same rules to which I have referred, which required that firemen as well as enginemen must be ready to receive signals. That is Wade, Volume 49, page 7026."

THE CHAIRMAN: That was quoting Wade?

MR. SINCLAIR: No, I think it was a summary.

THE CHAIRMAN: Then the next was Volume 49, page 7026. All right. Now you are dealing with the New York Central rules in Volume 44, page 6248.

MR. SINCLAIR: The rule is set out there and referring to firemen it says:

"They must take charge of the



"engine in the absence of the engine-man and not permit any unauthorized person to be upon it."

Then the one above that on the same page:

"They must observe and give immediate notice to enginemen of any signals or other conditions affecting the safety of the train."

In my submission it is obvious from the wording of those rules that they are not dealing with signals being passed from the ground to the engine, but are referring to fixed signals in yards or on the road.

Mr. Lewis, after referring to these rules at page 9366 in his argument, went on to submit, and I am quoting him as follows:

"-- it is inconceivable that, if the practice of giving signals through the fireman were really as hazardous and undesirable as company witnesses attempted to make out or if it were hazardous or undesirable to any extent at all, the company would have ignored and, indeed, condoned the practice throughout many decades until October of last year. It must, therefore, in the Brotherhood's submission be concluded that the practice





"was accepted as a normal one and as unobjectionable until one year ago."

Now, in my submission such a statement and conclusions are not supported by the evidence; indeed they are directly controverted by clear testimony.

Fraine, Volume 18, 2305-2306.

Shepp, Volume 3, pages 409-410.

Kelley, Volume 12, pages 1595-1596.

Alver, Volume 15, pages 1901-1902.

Alver, Volume 16, pages 2039-2049.

The next point I wish to deal with is the issue raised by you, Mr. Chairman, at page 9392 of Volume 67. After Mr. Lewis had dealt with what he characterized as the hazard of being on the top of cars and had referred to the evidence of certain witnesses, you, sir, asked:

"Should not it be the yardmen and the train crew who take that position, rather than the firemen?"

Meaning their organizations. I do not think my friend dealt with your question and as it seemed to be a matter on which some expression of view might be desirable, I thought that I recalled a somewhat similar inquiry being directed during the proceedings, and I looked



this up. I found that that was so. This was on March 20, 1957, and will be found in Volume 13, pages 1682 and going over to 1684. May I read that:

"The Chairman: Mr. Lewis, when I think of this practice of the workman being on top of cars for the purpose of passing signals or setting brakes or anything else, has the Board of Transport Commissioners any jurisdiction as to prescribing whether such a thing as that or any other practice is to be prohibited because it is dangerous or something of that kind. Is there any such jurisdiction?

Mr. Lewis: According to my reading of the act -- my learned friend has dealt with it much more than I -- I would say that they would have jurisdiction to issue an order relating to whether or not it should be done that way or what precautions should be taken if it were done that way, and so on. But I cannot recall any order to that effect. There are a large number of orders and I have looked through them. I cannot recall any order dealing with it.

The Chairman: Has any complaint



"ever been made of that practice to the Board?

Mr. Lewis: I was instructed the other day by someone who is not a member of my clients that some complaints have been made to some of the officers of the Board, but I cannot say whether there has been any formal request from the Board as such --"

I think that should be formal request to the Board.

-- but some complaints have been made to inspectors and so on.

The Chairman: No formal requests from your clients have been pressed or anything of that kind?

Mr. Lewis: Not that I know about, sir.

The Chairman: I referred to 'your clients'. Do the workmen belong to some union?

Mr. Lewis: They belong to the Brotherhood of Railroad Trainmen, sir." That "workmen" I think should read trainmen.

"Mr. Lewis: They belong to the Brotherhood of Railroad Trainmen, sir.

The Chairman: That is what I should have said.

Mr. Lewis: According to the conversations I have had I cannot recall





"being told of any request being made but I will look into that and I also cannot recall any order relating to it."

Of course no order or any matter of complaint was brought to the attention of the board. Under the Railway Act, Section 290, the board has jurisdiction on its own motion or complaint or request to deal with matters of safety. Under subsection (1) of Section 290 -- I will read just the relevant part and leave out certain aspects of it:

"May make orders and regulations and provide for ... the protection, safety, accommodation and comforts ... of the employees of the company in the running and operating of trains --"

That subsection deals with matters of safety. Trains of course are defined in the Railway Act in a specific way. That is to be found in Section 2, subsection (34) which reads:

"'Trains' includes any engine, locomotive or other rolling stock."

That is a different definition than that under the operating rules. Now the next point I wish to deal with in Mr. Lewis' remarks is that which will be found in Volume 67, page 9396. There Mr. Lewis





referred to my remarks concerning the weight to be given to the briefs which were read to the Commission by members of the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen. He did not think -- the reference to my remarks will be found in Volume 65, pages 9212-9216.

Mr. Lewis correctly suggested that my point was that less weight should be given to these briefs because they were made following an understanding between the officers of the firemen's union and the officers of the other unions. There were some other reasons that I mentioned following that, including the fact that the other unions involved had entered into contracts with the Canadian Pacific and other railways for operations without firemen.

The other point I wish to make is this. So that there may not be any misunderstanding, it was not my suggestion that there was anything wrong or sinister about the fact that the unions had got together and that they should have agreed to present a common front in so far as they were able to do so. My point is precisely this. What occurred is an expression of union solidarity in the face of the company taking a position affecting the members of one union.

The men who presented briefs came



forward after receiving instructions from the heads of their unions to prepare and present evidence that would result in maintaining firemen on diesel locomotives on the Canadian Pacific. I refer here to Exhibit 275.

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There is also, and I referred to it earlier, the trainmen's evidence, Volume 56, page 7900.

The next point I wish to deal with is the experience of operating without a fireman and I wish to deal first with the Quebec North Shore. Mr. Lewis seemed to gain some comfort from the fact that the Quebec, North Shore did not have terminal yard operations. I think the way he put it is that it did not conduct them itself. However, the evidence is clear and it is found in Mr. Bybee's testimony, Volume 27, page 3698 and pages 3735 and 3736. His evidence was that both at Seven Islands and at the northern terminal of the Quebec, North Shore switching is carried on with 750 and 1500 horsepower diesel units, in all cases with an engine-man alone and a ground crew of three.

THE CHAIRMAN: What is the northern terminus of that railway?

MR. SINCLAIR: Silver. Next, while it is admitted that operations without a fireman in the United States on the Canadian Pacific and on the Canadian National are not broad, this is because of the diesel rule --

THE CHAIRMAN: What is this point?

MR. SINCLAIR: The next point Mr. Lewis made, and I admit this, is that the experience of operations in Canada on the Canadian Pacific and on the Canadian National and in the United States is not broad so far as operations without a fireman are concerned. I say this is





because of the diesel rule in the collective agreements. Nevertheless, and this is the point, where agreements permit operations are carried out without a fireman and they have ~~successfully~~ been carried on /as I pointed out last week.

The next point Mr. Lewis went to was the European experience of operations without a fireman, which he admitted was significant. I have two or three points arising out of his European comments, if I may. He attempted to take the position that in yards, and I am quoting him from Volume 67, page 9405: "the work seemed to be a great deal more leisurely than what we observed in the C.P.R. yards."

He excepted the British operations from that statement. Mr. Chairman and Members of the Commission, with respect, how any one could assess the switching at Basel in Switzerland, for example, as more leisurely than on the C.P.R. is to me amazing.

THE CHAIRMAN: Basel and where else?

MR. SINCLAIR: At Basel and I will also suggest at Rotterdam. What I think has happened is that my friend has been misled by his recollections of the situation that was found at the Gevrey-Chambertin marshalling yard. The Commission was there on a Monday after the yard had all Sunday to be cleaned up, and the Commission will recall that they were told there that the yard got very busy after four o'clock in the afternoon but it



was agreed that it was not necessary to stay because the party had seen everything that it was necessary to see.

The next point made by Mr. Lewis about the European observations, on which I have a word or two to say, is found at page 9409 of his remarks. He said that in Europe the yard crew was attached not to an engine as here, on the Canadian Pacific, but to a specific location in the yard. That is quite right in some instances, but he went on to state, as found towards the end of the second paragraph on that page:

"That of course means that you can have only one engine working in that location since, when that yard crew was through with a particular job which the engine was working on within the area of its responsibility or location, and only then could some other work take place within that same area since they were attached to that area and not to any engine."

My submission is that the point, of course, is just the opposite from what Mr. Lewis said. Where there are two or three engines working in an area some members of the ground crew in Europe shift from one engine to another, sometimes one, sometimes two, depending on the work the engines are doing. This was observed in France at



Sotteville outside of Rouen and in Switzerland at Basel and in Holland at Rotterdam. One of the men would go over and make the couplings or go over and ride the cars, leaving the engine to move off with one of the ground crew and in other cases two.

The next point to which I wish to make reference is to be found at page 9422 of Mr. Lewis' remarks and it has to do with the training of enginemen in Europe as it is set out in Exhibit 180-A. I do not think it is necessary to repeat the remarks I made concerning that last week.

Mr. Lewis had some other points but in the point he dealt with at page 9422 he referred to training on the mechanical side, and he referred only to the Swiss and Dutch railways to make this point because it does not apply if you take the French and British. Near the bottom of page 9422 he stated that their experience does not indicate "that engine crews need not be concerned very much about technical and mechanical aspects of their motive power" because "then those railways would not have taken the pains which 180-A shows they in fact took to train their engine crew very fully in the mechanical and technical aspects of the engine. Surely it must not be given to engineers just for the fun of giving it to them; it must be, in my respectful submission, that the Swiss and Netherlands





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railways have found there was value in the engine crew knowing as much as is possible about the technical and mechanical aspects of the engines which they drive in order to be able to deal with emergencies and with failures and with difficulties on the road."

You said, Mr. Chairman, "That is the engineer?" Mr. Lewis answered, "In their case the engineer." Then he went on to say that in our case he was taking that position with respect to the engine crew, including the helper or fireman.

Of course, Mr. Chairman and Members of the Commission, the practice of having a passed or served time craftsman, trained both as an electrician and a mechanic, in the person of the engineman in Switzerland and in Holland is directly opposite to the practice in Canada where enginemen are not craftsmen. They receive no training as craftsmen. They have no craftsman's tools in Canada. The craftsmen in Canada are centralized in the shops.

Canadian Pacific has taken the position that it does not wish engine crews to attempt to make repairs and therefore does not train them as craftsmen. Canadian Pacific does not attach any responsibility for repairs or mechanical checks to engine crews but leaves the responsibility with the craftsmen in the shops who are capable by training and experience to deal with such matters.





I will go on to another point now, Mr. Chairman. The first point Mr. Lewis made yesterday afternoon, as found in Volume 67, page 9424, is a point which, in my respectful submission, is completely without substance. He said that mixed trains were not included under Question 1 within the words "freight service". It is to be noted that it is not "freight trains" that are being dealt with in Question 1 but "freight service."

It was only because I had anticipated that there might be some misunderstanding as to the position of the company that I asked the Commission to make clear in dealing with freight service that it included mixed trains.

I have one fact that I wish to add to what I said earlier on this matter, and in my opinion it disposes of any argument completely, if I may say so. "Freight service" undoubtedly includes mixed trains as is recognized by The Firemen's Union and by Canadian Pacific in the collective agreement. I should like to refer, if I may, to Exhibit 1, Article 3, which is on page 7 of Exhibit 1. This Article is headed "Freight Service" and paragraph (a) has the heading, "Application of freight rates." It is in these words:

"Freight rates will apply in through and irregular freight, mixed, pusher, helper, mine run and roust-about, belt line, work, wreck, light running



"construction, circus train, trains established for the exclusive purpose of handling milk, and all other unclassified service."

All of these types of trains are covered by the words "Freight Service" in the question as it is set out in the Order in Council.

Mr. Lewis then went on, as found at page 9426, to deal with what he considered were the functions of a fireman alone and then he listed the functions that were joint. As to the latter, they have been dealt with exhaustively but as to the first he listed four functions that he said were functions of the fireman alone. My point is that the first three of these functions he listed have either disappeared or have been eliminated by the company. The fourth was the function of replacing the engineman in case of need.



THE CHAIRMAN: What was that?

MR. SINCLAIR: He emphasized replacing the engineman in case of need.

THE CHAIRMAN: Replacing?

MR. SINCLAIR: Yes, taking over from the engineman.

THE CHAIRMAN: Oh, replacing the engineer. Yes.

MR. SINCLAIR: Assuming that the fireman is a qualified engineman in every case. He said this point of his did not only cover the case of seizure and blackouts which I demonstrated, in my respectful submission, to be relevant, but he said it also covered cases in which the engineman needed relief for any cause, one of them being when the engineman was fagged out -- I think that was the major one.

Now the evidence, Mr. Chairman, is quite clear that it is much easier on the engineman to handle a diesel locomotive than it is for him to handle a steam locomotive. This is stated by Woodland at Volume 25, pages 3342-43 and Hooley, Volume 34 at pages 4824 and 4825.

Then Mr. Lewis went on to add, at page 9430 on this same point, that there was no law in Canada which specified or restricted the number of hours that a train engineer -- I am quoting -- may or may not work. Then there was a discussion of the train and





engine crew having the right to book rests after twelve hours. That is a term of the collective agreement. It is a little mixed up in the transcript, but that is what we were getting to -- it was a term in the collective agreement.

Mr. Lewis was right. There is no law specifying the number of hours that an engine-man can work and in my respectful submission it is not hard to see why. No such law is necessary, in my submission, and it is not considered necessary by the Board of Transport Commissioners or by anyone who may apply or complain to them. The Board of Transport Commissioners have specific jurisdiction in this matter. Again I refer to Section 290 of the Railway Act, Canada, subsection (j), which is here before me. It says -- and I am quoting -- that the Board may make orders and regulations limiting or regulating the hours of duty of any employee or class or classes of employees with a view to the safety of the public and of employees.

One other point. At two places in his remarks yesterday -- I do not think it is necessary to pinpoint them -- Mr. Lewis suggested that there was a transfer of work involved in the company's proposal and he said that this involved possible jurisdictional problems. Now I do say this to the Commission -- that jurisdictional questions only arise



where there is a transfer of craft rights. There is no craft right being transferred under the company's proposal -- the company's proposal is to remove unnecessary duplication by firemen of work that is the duty of others and which, indeed, in our submission, can be better performed without that unnecessary duplication by the firemen.

There is one other remark made by Mr. Lewis on Question 1 to which I wish to refer briefly. He said yesterday that maintaining a fireman was a fool proof system and the only fool proof system with regard to safety. Of course, there is no fool proof system; there is no such thing as absolute safety either on the railway or anywhere else. In any event, the submission of the company and the weight of the evidence is that the safety record will not be impaired but that in fact, if anything, it will be bettered by the removal of the firemen.

Now on Question 2, Mr. Lewis said the only thing he was authorized to say was that in the opinion of the Brotherhood the policy outlined by Mr. Crump as to the terms and conditions which would pertain for firemen who were removed from freight and yard service were properly a matter for the negotiating table. Mr. Lewis said that was the Brotherhood's view. That, however, is not important. What is important is that it is not the view



of the Governor-in-Council who said in clear and unmistakable terms on Question 2 that this matter was to be dealt with by the Commission. It is my respectful submission that the inference that should be drawn from the position taken by the Brotherhood on this question is that they have no reasonable criticism to make of the proposal as put forward by Mr. Crump and as set out in Exhibit 198-C.

On Question 3, Mr. Lewis first said that what was involved was a wage cut. He said that in 1957 in our country wage cuts were not even discussed, let alone justified -- I am quoting his words. Surely Mr. Lewis is not suggesting to this Commission that if firemen are being paid when they are not working that that is not a matter that should be corrected, or that if firemen are being paid when they are not required to be on duty that also is not a matter that should be corrected?

Mr. Lewis at page 9445 suggested that this Commission could not and did not go into the merits of the question as to whether wages should be increased or reduced. You, Sir, Mr. Chairman, pointed out that this Question 3 was the subject of agreement between the Union and the Railway, and if anyone had evidence as to the adequacy of pay or if any other evidence was necessary for the Commission to





answer, the obligation was on that party to present that evidence.

Now, Mr. Chairman, the only evidence before the Commission on pay -- and it is uncontradicted evidence -- on the subject of firemen's wages and their comparison with the wages paid to other members of the running trades is to be found in Exhibit 14 which I introduced when Mr. Gossage was on the stand, and Mr. Gossage discussed it. I should like to read to the Commission from Volume 1 and Volume 2 on this point -- Volume 1 at page 141, right at the bottom of the page, Mr. Gossage on the stand and examined, and I am following right on to the beginning of Volume 2.

"Q. How much would a fireman in passenger service earn? You have prepared an Exhibit showing the average earnings per hour worked, twelve-month period, September 1955 to August 1956, Canadian Pacific System. I would ask to have that marked as Exhibit 14.

MR. LEWIS: If I may, I am wondering what part of the enquiry that the Commission is making and the determination it may have to make this kind of material is relevant to. The average earnings of employees would be relevant to





"a wage dispute or something of that sort but with great respect I, at the moment, do not see the relevance of this kind of material to the issues described or defined in the Order in Council.

(Exhibit No. 14)

THE CHAIRMAN: If you cannot see it at this stage I do not suppose that anyone up here can. Perhaps Mr. Sinclair will make it clear tomorrow morning.

MR. SINCLAIR: I should be glad to say what it is at this time to help my friend so that he won't worry about it over night."

MR. SINCLAIR: Mr. Lewis assured me that he would not worry about it over night.

Then, the next morning, as recorded in Volume 2 at page 147:

"MR. SINCLAIR: Mr. Chairman, at the sittings yesterday my friend Mr. Lewis raised a question as to the relevancy of the evidence we were tendering in regard to earnings of firemen.

THE CHAIRMAN: Exhibit 14.

MR. SINCLAIR: Yes. It is my submission that this material and some that will follow is relevant, first to show that firemen are



"today receiving good wages --  
it could be expressed another way  
but let us express it that way,  
that they are receiving good wages.  
The elimination in toto of the  
arbitraries, indeed, the elimination  
of the Mountain differential allow-  
ances in toto would not impose on  
them any hardships. These additional  
payments are not necessary to provide  
a fair level of compensations. That  
applies to both steam and diesel fire-  
men, in passenger and freight and yard  
service."

MR. SINCLAIR: I then said what the  
second point was, having to do with Question 2  
which I do not think it is necessary to read at  
this time. Then, over on page 148:

"MR. LEWIS: Mr. Chairman, if  
my friend's evidence is directed to  
trying to show that the arbitraries  
and the Mountain differentials are  
not necessary and that certain sav-  
ings will be obtained by the removal  
of firemen from diesel engines, to  
that extent I admit that consideration  
of the cost of the firemen's services  
is relevant. If that is the purpose  
of that evidence I make no objection."  
Then he went on to say:

"But if those are the weights



"to which my friend is directing that evidence, then it may be relevant."

Later I went on, following in Volume 2, to suggest some comparisons between firemen's wages and wages paid in outside industry, and this was objected to by my friend, Mr. Lewis, and I withdrew them, content with the evidence, I may say, that I had already on the record. If Mr. Lewis wanted to attack the evidence I put in he could have done so and I could have met it by evidence in rebuttal if I had thought that was necessary.





Now, what seems to have been overlooked by Mr. Lewis on this question of arbitraries is that the company, under the collective agreement, can now require firemen to report at a given time and to stay on duty to a given time. What it proposes is to reduce the time the men can be required to be on duty to the time that they are actually required. That is to say, instead of having firemen around when there is nothing for them to do, firemen will be around only when there is something for them to do and they will be paid for every minute of it.

On the matter of preparatory and final arbitraries, Mr. Lewis made a statement which appears at page 9451 of the evidence and continues on the next page. At the beginning of the paragraph at the bottom of page 9451 there is a little mix-up in the transcript but I will read from the last incomplete sentence on the page. The first sentence in that paragraph reads:

"The Brotherhood is not prepared to discuss a modification or modifications of these arbitraries shown on Exhibit 5." I think the word "not" should be eliminated from the first line. Mr. Lewis shakes his head in agreement.

MR. LEWIS: That is right.

THE CHAIRMAN: That is page 9451?



MR. SINCLAIR: Yes, page 9451, Volume 67. The paragraph starts with the words, "The Brotherhood is not prepared," and the word "not" should be eliminated. The first sentence in the last paragraph on page 9451 would therefore read:

"The Brotherhood is prepared to discuss a modification or modifications of these arbitraries shown on Exhibit 5. That is, excluding the hostling and work train alleged arbitraries with which I shall deal separately. The Brotherhood, therefore, respectfully suggests that the answer to Question 3 by the Commission with respect to preparatory and final inspection arbitraries might be, or should be in its respectful submission, to the effect that they ought to be modified and that the evidence supports a conclusion they should be modified. Then, further, that the question of how and to what extent they should be modified -- this is also asked in Question 3 -- that that question should be remitted or left to the parties for negotiations in the light of the finding of the Commission; in other words, in the light of the finding of the Commission that they



"should be modified."

THE CHAIRMAN: Well, you say again that we cannot evade anything specifically laid upon us by the Governor in Council?

MR. SINCLAIR: Yes, that is right, and I also say this, too, that the jumble that arbitraries are in today is the result of the fact that there has not been an independent factual review and recommendation and this Commission has given the parties an opportunity to have just that, and that was the purpose of the question.

Now, on the other two arbitraries, namely hostling arbitraries and work train arbitraries, I had the greatest difficulty in following Mr. Lewis. Taking hostling arbitraries first, he said this was not an arbitrary because it was not paid every day but was only paid on some days under some circumstances. He then went on to say that it was a minimum period of time. Now, if the minimum period of time not related to the work to be done is not an arbitrary in the true sense, then I don't know what is. The fact that it is not paid every day only means that it does not arise every day that a fireman assists in putting a locomotive into or out of a shed. That it was recognized as an arbitrary within the





meaning of Question 3 is demonstrated by Exhibit 1-A, page 8, where it is set out under the heading "Initial and Final Arbitrary Allowances." Under that general heading we have "hostling" and we also have "work trains." On the question of the work train arbitrary Mr. Lewis said it was nearer to being an arbitrary although it was not quite the same thing as preparatory and final arbitraries. Now, I agree that it is not quite the same thing. It is specified in the agreement separately. It is also set out separately on page 8 of Exhibit 1-A and the collective agreement specifies a longer period of time than the normal final inspection arbitrary.

What Mr. Lewis is trying to suggest with respect to a hostling arbitrary and a work train arbitrary is that because the company is in an unusual situation it should be penalized by paying firemen for a greater period of time than they are required. Of course, I say that is not correct either in principle or in fact.

Now, on the matter of differences between east and west in arbitraries, Mr. Lewis suggested that there might be other things to offset the difference in arbitraries that exist in the western agreement as compared to the eastern agreement.





Now, this is new and my friend is much too experienced to have overlooked the necessity of calling evidence to support such a suggestion and having that evidence dealt with by cross-examination or by counter-evidence from the company if he was to raise it seriously.

My last point refers to the mountain differential and I have one point on it. The elements that were involved in the establishment of mountain differential, as shown by the evidence, are as follows:

(a) Work factor.

THE CHAIRMAN: Work what?

MR. SINCLAIR: Work factor or work element.

(b) Hazard.

(c) Time.

The importance of these as factors was in the order I have given in my submission. The evidence demonstrates that the work factor has been eliminated by the diesel. The evidence further demonstrates that the hazard has been largely removed by the devices referred to by Mr. Hooley and by Mr. Smith. As to time or average speed, Mr. H. O. May -- Mr. Lewis referred to this yesterday and I referred to it, too, -- said that the purpose of the mountain differential was



to equate compensation for slower time. The difference in weight on drivers of multi-unit diesels in mountain territory as compared to valley territory more than covers the compensation factor as I demonstrated in my review of the evidence on this point last week.

Now, as this is the last time I will have an opportunity to speak in these proceedings, Mr. Chairman and members of the Commission, may I say that the Canadian Pacific is most sincere in its thanks to you for coming to grips with the problems and for the expenditure of time and great effort that this has entailed; and particularly does the company appreciate the fact that the members of this Commission at considerable inconvenience to themselves spent many hours making observations in yards and elsewhere on trains both in Canada and in Europe.

Personally I have found these proceedings many times tedious and hard work but they have been made pleasant for me personally by the consideration the Commission has shown me. Thank you for that.

THE CHAIRMAN: Well, gentlemen, as I said to Mr. Lewis yesterday, I am sure we all appreciate that we have been able to function thus far acceptably and although



none of us would want this hearing to degenerate into a mutual admiration society, nevertheless I think my colleagues would complain if I did not say on their behalf, as well as on my own, that we have appreciated how well this case -- if I may refer to it as a case -- has been prepared and presented. Counsel have certainly given us material upon which we can answer the questions which the Governor in Council has asked us to answer and the arguments have fully covered the ground that we must cover, and we thank you.

---The Commission adjourned at 11.25 a.m.

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